

PUBLIC INTEREST DISCLOSURE PROCEDURES

Governance Section, Corporate Branch

Policy Number: PCY14/001

I, Emma Appleton, Chief Operating Officer of the National Library of Australia, being delegated with the power under the *Public Interest Disclosure (National Library of Australia) Delegation 2021*, issue the National Library's Public Interest Disclosure Procedures under s 59(1) of the *Public Interest Disclosure Act 2013*.

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1. Introduction

- 1.1. The objects of the *Public Interest Disclosure Act 2013* (PID Act) are to:
- promote the integrity and accountability of the Commonwealth public sector;
 - encourage and facilitate the making of disclosures by public officials;
 - ensure that public officials who make public interest disclosures are supported and protected from adverse consequences relating to the disclosures; and
 - ensure that disclosures by public officials are properly investigated and dealt with.
- 1.2. The National Library of Australia (the National Library) is committed to the objects outlined above. The National Library will act on disclosures and protect disclosers from any reprisals, or threats of reprisals, as a result of making a disclosure.
- 1.3. These Procedures outline the National Library's approach to matters arising under the PID Act.

2. Definitions

Authorised officers	<p>Section 36 of the PID Act provides an authorised officer is:</p> <ol style="list-style-type: none">1. the principal officer of the agency – in the National Library's case, the Director-General (DG);2. a public official who:<ol style="list-style-type: none">a. belongs to the agency; andb. is appointed, in writing, by the principal officer of the agency as an authorised officer for the purposes of this Act. <p>The PID Act confers certain powers and functions on authorised officers. The DG has appointed authorised officers through the <i>Instrument of Appointment – Public Interest Disclosure Act 2013</i>, which is available on the National Library's intranet. A list of authorised officers is also available on the National Library's intranet.</p>
Delegates of the principal officer	<p>The principal officer can delegate any or all their functions or powers under the PID Act to a public official who belongs to the agency.</p> <p>The DG has done this via the <i>Public Interest Disclosure (National Library of Australia) Delegation 2021</i>.</p> <p>Public officials who have been delegated the principal officer's powers may have responsibilities including investigating disclosable conduct, preparing a report of their investigation and providing a copy of that report to the principal officer, the discloser and the Ombudsman.</p>
Disclosable conduct	<p>Disclosable conduct is defined in s 29 of the PID Act. It is conduct engaged in by an agency, a public official (in connection with their position as a public official) or a contracted service provider for a Commonwealth contract (in connection with entering, or giving effect to, the contract). Disclosable conduct is:</p>

	<ul style="list-style-type: none"> • conduct that contravenes a law of the Commonwealth, State or Territory; • conduct in a foreign country that contravenes a law that is in force in the foreign country and is applicable to the agency, public official or contracted service provider and corresponds to a law in force in the ACT; • conduct that perverts, or is engaged in for the purpose of perverting, or attempting to pervert, the course of justice; • conduct that involves, or is engaged in for the purpose of, corruption of any other kind; • conduct that constitutes maladministration, including conduct that: <ul style="list-style-type: none"> ○ is based, in whole or in part, on improper motives, or ○ is unreasonable, unjust or oppressive, or ○ is negligent; • conduct that is an abuse of public trust; • conduct that is fabrication, falsification, plagiarism, or deception, in relation to: <ul style="list-style-type: none"> ○ proposing, carrying out, or reporting on the results of scientific research, or ○ misconduct relating to scientific analysis, evaluation or the giving of scientific advice. • conduct that results in wastage of public money or property, or money or property of a prescribed authority (including the National Library); • conduct that unreasonably results in a danger to the health or safety of one or more persons, or that unreasonably results in a risk (or increased risk) of such danger; • conduct that results in a danger to the environment or a risk (increased risk) of such a danger; • conduct of a kind prescribed by the Public Interest Disclosure Rules if they have been made; • conduct engaged in by a public official that involves, or is engaged in for the purpose of, the public official abusing their position as a public official; • conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action against the public official. <p>Disclosable conduct does not include:</p> <ul style="list-style-type: none"> • Personal work-related conduct, unless it is a reprisal action or relates to systemic wrongdoing; • disagreements with government policy, action or expenditure; • conduct in connection with Courts or Commonwealth tribunals; • the actions of parliamentarians; and • the proper activities of intelligence agencies.
Discloser	A current or former public official who reports disclosable conduct in accordance with the PID Act.

Personal work-related conduct	Where one person engages in conduct that relates to another person's engagement, appointment or the exercise of their functions or powers, and the conduct has personal implications for that second person. This includes conduct that relates to interpersonal conflict such as bullying and harassment, or conduct relating to the terms and conditions of engagement and disciplinary action.
PID officer	Under the <i>National Anti-Corruption Commission Act 2022</i> , PID officers are staff members of Commonwealth agencies who have responsibilities for allocating internal disclosures (known as Authorised Officers under the PID Act and investigating internal disclosures under the PID Act).
Principal officer	The agency head – for the National Library, this is the Director-General.
Public interest disclosure (disclosure)	There are five types of disclosures covered by the PID Act – internal, National Anti-Corruption Commission (NACC), external, legal practitioner, and emergency disclosures. Further information is provided at paragraphs 3.5 and 3.6 below.
Public official	<p>The term public official is defined very broadly in section 69 of the PID Act. It includes:</p> <ul style="list-style-type: none"> the principal officer of a prescribed authority. For the National Library, this is the Director-General; a member of the staff of a prescribed authority, including an APS employee in the prescribed authority; an individual who is employed by the Commonwealth otherwise than as an APS employee and performs duties for a prescribed authority. For the National Library, this includes members of the Library's Council (other than members of Parliament). an individual who is a contracted service provider for a Commonwealth contract – this may include an individual who is an officer or employee of a contracted services provider for a Commonwealth contract who provides services for the purposes of that contract. <p>A person can also be deemed by an authorised officer to be a public official in accordance with s 70 of the PID Act.</p>
Reprisal Officer	The person who undertakes a risk assessment of reprisal action and takes steps to mitigate the risk of reprisal action being taken against the discloser.

3. Procedures

3.1. DISCLOSURE TO AN AUTHORISED OFFICER

Where possible, public officials should make their disclosure to an authorised officer. Authorised officers have been trained in how to receive and handle disclosures. The National Library maintains a list of authorised officers for the purposes of the PID Act who have been appointed by the Director-General. The list of authorised officers can be accessed from the National Library's internet and intranet.

Further information for authorised officers is at **Attachment B** to these Procedures.

3.2. **DISCLOSURE TO A SUPERVISOR**

If a public official discloses information to a supervisor and the supervisor has reasonable grounds to believe that the information could concern disclosable conduct, the supervisor must give the information to an authorised officer as soon as reasonably practicable.

Further information for supervisors is at **Attachment D** to these Procedures.

3.3. **PROTECTING CONFIDENTIALITY**

Any information that a person obtains while performing investigative processes under the PID Act must be kept confidential (s 59(4)9b). The identity of both the discloser and the person alleged to have engaged in the disclosable conduct should not be revealed except where this is reasonably necessary for the effective investigation of the disclosure.

Any interviews conducted by an authorised officer or delegates, including investigators, should be conducted in private.

Any interviews with the discloser should be arranged to avoid the identification of the discloser by other staff.

3.4. **DIFFERENT TYPES OF DISCLOSURES**

A disclosure may be:

- an internal disclosure;
- a NACC disclosure;
- an external disclosure;
- a legal practitioner disclosure; or
- an emergency disclosure.

The different types of disclosures are discussed below.

3.5. **INTERNAL DISCLOSURES - INITIAL CONSIDERATION AND ALLOCATION**

Step 1: The authorised officer will consider whether the internal disclosure meets the requirements of the PID Act

Disclosures can be made by current or past public officials. The PID Act defines a public official broadly and includes a provision (s 70) for a person to be deemed to be a public official.

The conduct must be of a kind defined in s 29 of the PID Act and set out in the Definitions section of this Procedure.

The conduct must have been engaged in by:

- an agency;
- a public official, in connection with their 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.

The disclosure must tend to show, or the discloser must have reasonable grounds for believing that the information they disclose tends to show, one or more instances of disclosable conduct.

Disclosures about personal work-related conduct are not covered by the PID Act, unless:

- the conduct constitutes reprisal action; or
- the conduct is of such a significant nature it would undermine public confidence in or has other significant implications for the National Library (or agencies).

Where a disclosure relates to both personal work-related conduct and other types of wrongdoing, it will still be covered by the PID Act provided the other wrongdoing meets the definition of disclosable conduct.

A disclosure may be made anonymously or using a pseudonym. A disclosure can be made orally or in writing.

An internal disclosure can be made to:

- an authorised officer of the agency to which the discloser belongs or of the agency to which the disclosable conduct relates;
- a supervisor of the discloser;
- the Commonwealth Ombudsman (**Ombudsman**) if the conduct disclosed does not relate to an intelligence agency and the discloser believes on reasonable grounds that it would be appropriate for the disclosure to be investigated by the Ombudsman); or
- the Inspector-General of Intelligence and Security (**IGIS**) (if the conduct disclosed relates to an intelligence agency and the discloser believes on reasonable grounds it would be appropriate for the disclosure to be investigated by IGIS).

If an authorised officer becomes aware of corrupt conduct that is serious or systemic, they must report the matter to the National Anti-Corruption Commission.

The authorised officer may allocate for investigation to another agency within the same portfolio as the National Library if it would be better able to handle the disclosure.

The disclosure will not be allocated if the authorised officer is satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be an internal disclosure.

An authorised officer is not required to allocate a disclosure for investigation if they are satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power (defined as another law of the Commonwealth or the executive power of the Commonwealth).

The alternative process of investigation must be more appropriate than investigation under the PID Act because it:

- is designed for investigating the specific kind of alleged conduct (for example, code of conduct);
- includes specific and required investigative powers; or

- is more flexible or better suited to investigating and responding to the alleged conduct.

If the authorised officer does not allocate the disclosure, and if it is reasonably practicable to contact the discloser, the authorised officer must inform the discloser of:

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

Further information for disclosers and potential disclosers is at **Attachment E** to these Procedures.

Step 2: The authorised officer will allocate the disclosure

An allocation within the same organisation consists of an allocation to the principal officer for them to consider and, if reaching that conclusion, conduct an investigation. The principal officer will ensure that disclosures are properly investigated. The responsibilities and powers of the principal officer are set out in **Attachment A**.

The authorised officer may obtain information and make such enquiries as they see fit, but only for the purposes of deciding to which agency (if any) a disclosure is to be allocated.

The authorised officer cannot allocate the disclosure to another agency unless an authorised officer of that agency has consented to the allocation.

In making the allocation decision, the authorised officer will have regard to:

- the requirements of the PID Act, and other regulations and rules that apply (e.g. that agencies should generally only deal with disclosures that relate to themselves); and
- any other matters that the authorised officer considers relevant.

The definition of allocation in s 8 of the PID Act includes a reallocation made in response to a recommendation by the Ombudsman or the IGIS or for any other reason.

The authorised officer must use their best endeavours to make the allocation decision within 14 days after the disclosure is made to the authorised officer.

Step 3: The authorised officer will notify the relevant parties of the allocation decision, and of certain other information as required by the PID Act

When the authorised officer allocates the handling of a disclosure to an agency, the authorised officer must inform the principal officer of that agency of:

- the allocation to the agency;
- the information that was disclosed to the authorised officer;
- the suspected disclosable conduct; and
- if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the principal officer being informed, the discloser's name and contact details.

The authorised officer must also provide the information outlined above to:

- the Ombudsman, where the disclosure is allocated to an agency that is not the Ombudsman, the IGIS or an intelligence agency; or
- the IGIS, where the disclosure is allocated to an intelligence agency.

As soon as reasonably practicable after the allocation, the authorised officer must inform the discloser in writing:

- of the allocation decision or non-allocation of the disclosure;
- the reasons for that allocation decision; and
- where allocated to another agency, the information that has been provided to the principal officer of that agency.

Step 4: The authorised officer will make a record of the allocation decision

The authorised officer must keep confidential written records of the allocation decision, including:

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

The authorised officer must also keep appropriate confidential records confirming the discloser was informed of the allocation decision including the day and time of notification, how the notification occurred and the content of the notification. The Director-General requires authorised officers to report on the number of disclosures they have received and allocation decisions in respect of those disclosures at least once a year.

3.6. OTHER TYPES OF DISCLOSURES

3.6.1 National Anti-Corruption Commission

The *National Anti-Corruption Act 2022 (NACC Act)* establishes the NACC.

Any PID officer who performs or exercises functions or powers relating to allocation or investigation of internal disclosures under the PID Act has a mandatory referral obligation if:

- in the course of exercising their functions or powers they handle an internal disclosure that raises a corruption issue under the NACC Act; or
- the relevant PID officer suspects the issue could involve serious or systemic corrupt conduct. (Serious or systemic are not defined in the NACC Act and take their ordinary meaning).

When these criteria are satisfied, the PID officer must refer the corruption issue to the NACC as soon as reasonably practicable after becoming aware of the issue.

The only exceptions to this requirement are if:

- the authorised officer believes on reasonable grounds that the Commissioner is already aware of the information; and
- a determination made by the Commissioner provides that referral is not required because of the kind of corruption issue involved or the circumstances in which it

arises.

Where a NACC referral occurs, the authorised officer must inform the discloser, as soon as reasonably practicable, of the referral.

The NACC Commissioner may direct the principal officer to stop acting in relation to a corruption issue, including a direction to stop investigating the disclosure.

The principal officer must notify the Ombudsman in writing if a stop action direction prevents allocation or investigation of the disclosure.

Where the NACC has issued a stop action direction, the principal officer should provide a copy of that direction notice to the discloser where appropriate or reasonably practicable.

Informing the NACC

In making a mandatory referral to the NACC, the PID officer must include the following information:

- all information relevant to the corruption issue in their possession or control when they make the referral; and
- the reason why they suspect the issue could involve corrupt conduct that is serious or systemic.

Information relevant to a corruption issue may include:

- the names of any public officials who the PID officer suspects have engaged in serious or systemic corrupt conduct;
- the names of any private individual or entities involved;
- a description of the conduct;
- the dates and timetables of when the alleged corrupt conduct occurred or may occur;
- how and when the PID officer became aware of the issue;
- any supporting documents or evidence; and
- any other relevant information.

Effect of NACC referral on PID Act Processes

Following the referral of a corruption issue to the NACC or the IGIS, the authorised officer is still required to deal with the internal disclosure, unless the Commissioner has issued a stop action direction.

A PID officer cannot decide not to allocate or investigate under the PID Act merely because the disclosure has been referred to the NACC or the IGIS.

If a stop action direction prevents allocation or investigation of a disclosure, and that direction is subsequently revoked, the usual timeframes stipulated in the PID Act for these actions begin again. For example, the 14-day timeframe for allocation will start again the day after the authorised officer becomes aware that a NACC stop action direction no longer applies.

3.6.2 External disclosures

An external disclosure can only be made where an internal disclosure of the same information has already been made.

The requirements of external disclosures are included in s 26(1)(c) PID Act. An external disclosure can be made to anyone other than a foreign public official.

To be afforded the protections under the PID Act when making an external disclosure, the discloser must:

- have information which tends to show, or information which the discloser believes on reasonable grounds tends to show, one or more instances of disclosable conduct; and
- first have made an internal disclosure of the information that comprises the external disclosure.

Where an investigation into an internal disclosure has commenced or was required, but the investigation was not completed within the statutory time limit or the discloser believes, on reasonable grounds, that the internal disclosure was handled inadequately, for example the investigation or the response to the investigation was inadequate, they may then make an external disclosure and be afforded the protections of the PID Act, provided that:

- the external disclosure is not, on balance, contrary to the public interest;
- no more information is publicly disclosed than is reasonably necessary to identify one or more instances of disclosable conduct;
- no intelligence information has been disclosed; and
- the information must not relate to an intelligence agency.

3.6.3 Legal practitioner disclosures

A public official may make a disclosure to a legal practitioner for the purpose of obtaining legal advice, or professional assistance relevant to a public interest disclosure. For the PID Act, a legal practitioner is an Australian lawyer who holds a practising certificate under legislation regulating the legal profession of each State or Territory. For example, in the ACT, this is the *Legal Profession Act 2006* (ACT).

The disclosure must not include intelligence information, and in circumstances where the discloser knows, or should know, that the information has a national security or other protective security classification, the legal practitioner must hold the appropriate level of security clearance.

3.6.4 Emergency disclosures

A public official may make an emergency disclosure under s 26(1)(c) of the PID Act to any person, other than a foreign public official, where:

- the public official believes, on reasonable grounds, that the information poses a substantial and imminent danger to the health and safety of one or more persons or to the environment;
- the extent of the information disclosed is no greater than is necessary to alert the recipient to the substantial and imminent danger;

- if the discloser has not previously made an internal disclosure of the same information, there are exceptional circumstances justifying the discloser's failure to make such an internal disclosure;
- if the discloser has previously made an internal disclosure of the same information, there are exceptional circumstances justifying the disclosure being made before a disclosure investigation of the internal disclosure is completed; and
- no intelligence information is disclosed.

3.6.5 Disclosures outside the PID Act

In the course of their duties, public officials are likely to come across private and sensitive information. Maintaining strict confidentiality is an important part of a public official's role and this obligation is often backed up by administrative and criminal penalties.

A public official will not receive any protection under the PID Act if they release information to someone outside of the Government, for example a journalist, Member of Parliament or a union representative, unless the conditions for an external, legal practitioner or emergency disclosure are met.

3.7 RISK ASSESSMENT OF REPRISAL ACTION

Conducting a risk assessment

Risk assessments will be required at various stages once a disclosure is made. The first risk assessment should be conducted by the authorised officer when they are allocating the disclosure. A further risk assessment may be carried out during the investigation process. It is necessary to assess the risk that any reprisal action may be taken against the discloser, and this risk may change as the matter progresses.

The person conducting the risk assessment should consider all relevant factors, including:

- the likelihood of the discloser being identified due to the size of the work area in which the discloser is located;
- the number of people who are aware of the information leading to the disclosure or who are likely to become aware during an investigation;
- the number of people implicated in the disclosure;
- the subject matter of the disclosure and if it will be difficult for the discloser not to discuss the disclosure in the workplace;
- the culture of the workplace and whether there is history of conflict in the work area;
- whether any specific threats against the discloser have been made;
- whether there are allegations about individuals in the disclosure;
- whether the disclosure can be investigated while maintaining confidentiality;
- the subject matter and significance of the issue being disclosed;
- the likely outcome if the conduct disclosed is substantiated;
- whether the discloser is isolated;
- whether the alleged wrongdoing that is the subject of the disclosure was directed at

the discloser; and

- the relative positions of the discloser and the person whose alleged wrongdoing is the subject of the disclosure (i.e. especially any vulnerability).

The following risk assessment matrix can be used when assessing risks of reprisals:

Likelihood of reprisal being taken against a discloser	Seriousness of reprisal				
		Minor	Moderate	Major	Extreme
	Almost certain	Medium	High	High	High
	Likely	Medium	Medium	High	High
	Unlikely	Low	Low	Medium	Medium
	Highly unlikely	Low	Low	Low	Medium

What constitutes reprisal action?

Disclosers 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 person (the first person) takes a reprisal against another person (the second person) if:

- the first person causes (by act or omission) any detriment to the second person and when the act or omission occurs, the first person believes or suspects that the second person or any other person made, may have made or proposes to make a disclosure and
- that belief or suspicion is the reason, or part of the reason, for the act or omission.

Detriment includes any disadvantage, such as:

- dismissal of an employee;
- injury of an employee in his or her employment;
- alteration of an employee's position to his or her detriment;
- discrimination between an employee and other employees of the same employer.

It is a criminal offence to take reprisal action or cause detriment to a person because they have, or are suspected to have, made a disclosure. Threatening reprisal action is also a criminal offence.

Examples of reprisals

- Occasional or one-off action that is likely to have a relatively minor adverse effect on the person (e.g., a singular exclusion of the person from a social activity);
- Repeated action which is likely to have an adverse effect on the person (e.g., routinely failing to "CC" the person on relevant work-related emails);
- Sustained or one-off action which has a significant impact on the person (e.g., consistently excluding the person from team discussions or imposing a negative performance assessment on the person);
- Action which is likely to have a very severe impact on the person (e.g.,

physical violence or the denial of a promotion opportunity).

Taking steps to minimise risks

The person conducting the risk assessment will need to take steps to mitigate the risk of reprisals being taken against the discloser. These steps may include some or all the support measures set out below and could include raising the matter with employees or reminding staff that taking or threatening to take a reprisal against a discloser is a criminal offence.

The person conducting the risk assessment should monitor the risks throughout the investigation process and adjust the mitigation steps if necessary.

Where appropriate, the person conducting the risk assessment may consult with the Director, Governance or Assistant Director – Legal, to support the conduct of the risk assessment.

3.7. PROTECTION FOR DISCLOSERS AND OTHERS

The PID Act provides strong protection for disclosers, including:

- protection of their identity (subject to limited exceptions);
- immunity from civil, criminal or administrative liability for making the disclosure;
- support and protection from reprisal; and
- recourse to court for remedies for any reprisal action.

Protecting the identity of a discloser

It is a criminal offence to use or disclose information that may identify that a person has made a disclosure unless certain exemptions apply. These exemptions are set out in s 20(3) of the PID Act:

- the use or disclosure is for the purposes of the PID Act;
- the use or disclosure is in connection with the performance of a function conferred on the Ombudsman or the IGIS by their enabling legislation;
- the use or disclosure is for the purposes of a Commonwealth law or a prescribed State or Territory law;
- the discloser consents to the use or disclosure; or
- the identifying information has previously been lawfully published.

Immunity from civil, criminal or administrative liability

A person who makes a public interest disclosure will not be liable to have any civil, criminal or administrative action (including disciplinary action) taken against them for making the disclosure. Contractual or other rights also cannot be enforced against a person because they made a disclosure.

However, there are three exceptions to this. Immunity will not apply:

- where the discloser makes a statement which they know is false or misleading;
- to protect a person from liability for specific offences under the *Criminal Code Act*

1995, namely giving false or misleading information or documents, making a false document, or using a forged document; or

- for making a disclosure that contravenes a designated publication restriction, except in certain circumstances.

In addition, if a public official makes a disclosure about their own conduct, the making of the disclosure does not protect them from liability for that conduct.

Protection for witnesses

Public officials are obliged to use their best endeavours to assist with a disclosure investigation.

Witnesses who assist with disclosure investigations have comparable protections to disclosers – protection against reprisal and immunity from civil, criminal and administrative liability.

A person will not be subject to any criminal or civil liability because the person, voluntarily or otherwise, gives information, produces a document or answers a question where:

- they have done so where requested by a person conducting a disclosure investigation; and
- the information, document or answer is relevant to the investigation.

There are some limited exceptions to the protection available to witnesses. For example, there is no protection from liability for an offence against ss 137.1, 137.2, 144.1 or 145.1 of the *Criminal Code Act 1995* that relate to the information, document or answer.

There is also a common law privilege against self-incrimination. This means a person may refuse to answer any question, or to produce any document or thing, if to do so may expose the person to conviction for a crime.

There is also a common law penalty privilege. Natural persons (as distinct from corporations) can rely on the privilege against exposure to penalties in some contexts. The penalty privilege will allow a person to refuse to provide a document or answer a question if the document or answer may tend to expose that person to a penalty.

Limitations

Making a public interest disclosure does not prevent supervisors and managers from addressing any unrelated unsatisfactory performance or misconduct by the discloser in the workplace.

Support for disclosers

Regardless of the outcome of the risk assessment, the principal officer is obliged to take all reasonable steps to protect public officials who have made a disclosure from real, or threats of, detriment arising from the disclosure. This may include:

- appointing a support person to assist the discloser and/or advising of the National Library's Employee Assistance Program;
- informing the discloser of the progress of the investigation;
- providing the discloser with notification of the completion of the investigation and a copy of the investigation report; and

- transferring the discloser to a different work area within the National Library (with the consent of the discloser).

Support for a person against whom a disclosure has been made

The person conducting the risk assessment will also take steps to support any employee who is the subject of a disclosure allegation and/or investigation. This may include:

- advising the employee of their rights and obligations under the PID Act and about the National Library's investigation procedures, including the employee's rights to procedural fairness;
- advising the employee of the availability of the National Library's Employee Assistance Program;
- ensuring that the identity of the employee is kept confidential as far as reasonably practicable; and
- re-assigning the employee to a different work area within the National Library (with the consent of the employee).

Information on the rights and responsibilities of persons who are the subject of a disclosure are at **Attachment F** to these Procedures.

3.8. INVESTIGATING DISCLOSURES

Provide initial information to disclosers

Where a disclosure is allocated to the National Library, the principal officer (or delegate) must provide the discloser with information about their power to:

- decide not to investigate the disclosure;
- decide not to investigate the disclosure further; or
- decide to investigate the disclosure under a separate investigative power.

Where it is reasonably practicable, the principal officer (or delegate) should give the discloser this information within 14 days of the allocation of the disclosure.

The obligation to investigate disclosures

Section 47 of the PID Act requires the principal officer to investigate a disclosure, which can include considering whether a different investigation (or reinvestigation) should be conducted under another Commonwealth law or power.

The investigation must be completed within 90 days from the date of allocation, but the principal officer can request an extension of time to complete the investigation from the Ombudsman.

The discretion to not investigate a disclosure

Section 48 of the PID Act provides a discretion to not investigate a disclosure, or to not investigate a disclosure further in certain circumstances, namely where:

- the discloser is not and has never been a public official;
- the information does not, to any extent, concern serious disclosable conduct;

- the disclosure is frivolous or vexatious;
- the information is the same, or substantially the same, as information which has been, or is being, investigated under the PID Act;
- the information is the same, or substantially the same, as information which is being investigated under another law or the executive power of the Commonwealth and it would be inappropriate to conduct another investigation at the same time;
- the information is the same, or substantially the same, as information which has been investigated under another law or the executive power of the Commonwealth and the principal officer is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation;
- the principal officer is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power. Furthermore, the principal officer cannot be satisfied that the conduct disclosed would be more appropriately investigated under another law or power where the conduct disclosed only raises a corruption issue;
- the discloser has informed the principal officer of an agency that they do not wish an investigation to be pursued, and the principal officer is reasonably satisfied that there are no other matters concerning the disclosure that warrant investigation; or
- the investigation is impractical because:
 - the discloser's name and contact details have not been disclosed;
 - the discloser refuses or fails to provide the information or assistance that the investigator asks for; or
 - of the age of the information.

Notify the discloser and Ombudsman

If the principal officer (or delegate) decides to exercise their discretion to not investigate the disclosure

Where it is reasonably practicable to contact the discloser, the principal officer (or delegate) will inform the discloser of:

- the decision to not investigate the disclosure;
- the reasons for the decision not to investigate; and
- any courses of action that might be available under other laws of the Commonwealth.

This does not apply if the principal officer (or delegate) is not able to contact the discloser.

The principal officer (or delegate) must also inform the Ombudsman of the decision to not investigate or not to investigate further and the reasons for that decision. The Ombudsman has a [notification form](#) for this purpose.

Where the disclosure is to be investigated

The principal officer (or delegate) will inform the discloser (as soon as practicable) of:

- the decision to investigate the disclosure; and
- the estimated length of the investigation.

Conduct of the investigation

The principal officer may delegate their power to investigate the disclosure to an investigator. The investigation may be conducted by an internal investigator or an independent person (i.e. external to the National Library) provided the investigator has been delegated the principal officer's relevant powers. The responsibilities and powers of investigators are set out in **Attachment C**.

The investigation must be completed within 90 days of the allocation of the disclosure.

Time frames will start counting again on reallocation, a decision to reinvestigate, or the day the principal officer becomes aware that a NACC stop action direction no longer applies.

It is possible to seek an extension of time to complete the investigation from the Ombudsman. Any application for an extension of time must be made to the Ombudsman at least 10 days before the 90-day deadline expires. The Ombudsman cannot grant extensions after the current investigation deadlines has passed.

General principles of the investigation

The purpose of the investigation is to investigate whether there are one or more instances of disclosable conduct.

The investigator is expected to keep the principal officer informed of the progress of the investigation, including for the purposes of satisfying time limits.

The following principles will apply to the conduct of an investigation:

- maintaining the confidentiality of the identity of the discloser as much as possible;
- due regard for the privacy of all parties;
- conducting the investigation in accordance with the principles of procedural fairness;
- a person who is the subject of the investigation will have an opportunity to respond or provide information;
- any evidence relied upon must be credible, relevant and significant;
- findings of fact will be based on logically probative evidence;
- decisions will be made on the balance of probabilities;
- compliance with the PID Act;
- complying with the restrictions on use and disclosure of information that are contained in ss 20 and 65 of the PID Act;
- compliance with the NACC Act;
- where the matter involves fraud or possible fraud, compliance with the *Commonwealth Fraud and Corruption Control Framework*, the *Australian Government Investigations Standards* and the *Commonwealth Fraud and Corruption Control Policy*; and
- where the matter involves a possible breach of the Code of Conduct, as specified in the *Public Service Act 1999*, compliance with the OAIC's *APS Code of Conduct Procedures* if an investigation is conducted under the PID Act (rather than deciding under s 47(3) that a Code of Conduct process should be conducted instead of a disclosure investigation).

The investigation can be undertaken as the investigator sees fit. This may include:

- initial review of the disclosure;
- deciding whether it is necessary to interview or obtain additional evidence from the discloser;
- reviewing existing records held by the National Library;
- interviewing other employees of the National Library.

Public officials are obliged to use their best endeavours to assist a disclosure investigation.

The investigator must determine whether the evidence gathered is sufficient to prove a fact. The standard of proof for determining whether evidence is sufficient to prove a fact is the balance of probabilities. A fact is taken to have been proven on the balance of probabilities if the investigator is satisfied it is more likely than not that the fact is true.

The investigator must ensure that the evidence relied upon in an investigation is credible, relevant and significant.

Additional procedures required in particular circumstances

If a disclosure relates to conduct that would require the National Library to take steps under the National Library's:

- *Fraud Control Plan*;
- *Managing Misconduct Procedures*; or
- any other of the National Library's policies or procedures,

the processes set out in those procedures and policies must be complied with in the conduct of an investigation under these Procedures.

If the investigator considers that information disclosed in the course of a disclosure investigation may be appropriately dealt with under another procedure or policy of the National Library, the investigator may recommend in the investigation report that this occur and the principal officer may refer the matter to the relevant officer of the National Library.

Obtain information during the investigation

During the investigation, the investigator may obtain information from such persons and make such inquiries as they see fit for the purposes of the investigation.

The investigator must ensure that suspected serious or systemic corruption uncovered in a disclosure investigation is referred to the NACC.

When conducting interviews, the investigator will inform the interviewee of:

- the identity and function of each individual conducting an interview;
- the process of conducting an investigation;
- the authority of the investigator under the PID Act to conduct the investigation; and
- the interviewee's duty:
 - if they are a public official – to use their best endeavours to assist the investigator in the conduct of the investigation;
 - 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.

The investigator will ensure:

- an audio or visual recording of the interview is not made without the interviewee's knowledge;
- when the interview ends, the interviewee is given an opportunity to make a final statement or comment or express a position; and
- any final statement, comment or position by the interviewee is included in the record of the interview.

In conducting the investigation, the investigator may adopt findings set out in reports of investigations or inquiries under other Commonwealth laws or executive powers, or other investigations under the PID Act.

Finalise the investigation

The principal officer (or delegate) can decide to stop an investigation after it has commenced in the same circumstances as the principal officer (or delegate) can exercise their discretion to not investigate a disclosure under s 48 of the PID Act.

The principal officer must take appropriate action in response to the recommendations and any other information in the investigation report, which may include:

- referral for a misconduct or grievance process;
- referral to the police or another body for further action;
- mediation or another form of conflict resolution;
- internal audit or other review of the activities or operations of the National Library;
- changing or implementing new policies, procedures or practices; and
- conducting training and awareness sessions for staff.

Referral of information to police and others

If, during an investigation, the investigator suspects on reasonable grounds that some of the information disclosed or obtained during the investigation is evidence of a crime, the investigator may disclose the information to a member of an Australian police force. If the information relates to an offence that is punishable for a period of at least two years, the delegate must disclose the information to a member of an Australian police force.

An investigation may also include consideration of whether a different or further investigation should be conducted by the agency or another body under another Commonwealth law or the executive power of the Commonwealth.

Prepare an investigation report

The principal officer (or delegate) is responsible for preparing an investigation report. The investigation must be completed, and the report prepared, within 90 days after the disclosure was allocated, unless this period is extended by the Ombudsman.

Any request for an extension of time should be made using the Ombudsman's request for extension of time [form](#). If the period is extended, the principal officer (or delegate) will inform

the discloser of the extension and the progress of the investigation.

Content of the report

The investigation report must set out:

- whether there have been one or more instances of disclosable conduct;
- the matters considered during the investigation;
- the duration of the investigation;
- steps taken to gather evidence;
- a summary of the evidence, as well as any findings and recommendations based on that evidence;
- the investigator's findings (if any);
- any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates;
- the action (if any) that has been, or is being, recommended to be taken;
- any claims made about detrimental action taken against the discloser or any other person, together with evidence, and the response to those claims.

Provision of the report to principal officer

A copy of the investigation report must be provided to the Director-General.

Provision of the report to the discloser

If it is reasonably practicable to contact the discloser, the principal officer (or delegate) must provide the discloser with a copy of the investigation report within a reasonable time after preparing the report. However, the following material may be deleted from the copy of the report given to the discloser:

- material that is likely to enable the identity of the discloser or another person;
- material which would be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*;
- material which would result in the document having, or being required to have, a national security or other protective security classification;
- intelligence information; or
- information which would contravene a designated publication restriction as defined in the PID Act.

Provision of the report to the Ombudsman or IGIS

The investigator should notify the Ombudsman (or IGIS if relevant) of the completion of an investigation under the PID Act and provide a copy of the investigation report. The Ombudsman (or IGIS) can make recommendations about the investigation report.

4. Review

These procedures will be reviewed every 3 years to ensure that they remain aligned with legislation.

5. References and related documents

The following documents and/or legislation were considered when developing this policy:

- *Public Interest Disclosure Act 2013*;
- *Commonwealth Fraud Control Framework*;
- *Australian Government Investigations Standards*;
- *Commonwealth Fraud Control Policy*;
- *Public Service Act 1999*;
- Office of the Australian Information Commissioner's (OAIC) *APS Code of Conduct Procedures*;
- the Library's *Fraud Control Plan*;
- the Library's *Managing Misconduct Procedures*;
- Ombudsman fact sheet: *Application of reforms to the PID Act*;
- Ombudsman fact sheet: *Changes to the PID Scheme*;
- Ombudsman fact sheet: *Personal work-related conduct*;
- Ombudsman fact sheet: *New responsibilities and powers of Principal Officers*;
- Ombudsman fact sheet: *New responsibilities and powers of Authorised Officers*;
- Ombudsman fact sheet: *New responsibilities and powers of Investigation Officers*;
- Ombudsman fact sheet: *New responsibilities and powers of Authorised Officers*;
- Ombudsman fact sheet: *Interactions between the NACC Act and the PID Act*; and
- Ombudsman fact sheet: *Public Interest Disclosure Scheme Reference Guide*.

Further guidance material on PIDs, including further information on NACC referrals is available on the Ombudsman's [website](#).

Information for Principal Officer¹

The principal officer the National Library has a range of responsibilities and powers including:

- influencing an organisational culture that supports public officials who speak up about wrongdoing;
- taking reasonable steps to protect public officials against reprisals in relation to disclosures that have been, may have been, are proposed to be, or could be made;
- taking reasonable steps to encourage and support disclosers, including potential disclosers, and those who provide assistance in relation to disclosures;
- taking reasonable steps to provide ongoing training and education to public officials about the PID Act, and any training necessary to support officials to carry out their functions under the Act;
- ensuring there are sufficient authorised officers readily accessible and public officials are aware of their identity;
- establishing internal procedures for facilitating and dealing with public interest disclosures;
- promptly act to investigate and address allegations of wrongdoing;
- ensuring disclosures are properly investigated;
- preparing an investigation report and take appropriate action, as soon as reasonably practicable, in response to recommendations made in the report;
- notifying the discloser and the Ombudsman (or the IGIS) of the completion of an investigation under the PID Act and providing a copy of the investigation report. The Ombudsman or IGIS may review handling of a disclosure and recommend particular action be taken; and
- driving change to address problems uncovered through the investigation of internal disclosures.

¹ Source: Ombudsman fact sheet: New responsibilities and powers of Authorised Officers

Information for authorised officers²

Authorised officers in the National Library 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;
- obtaining information and making enquiries as they see fit, but only for the purpose of deciding to which agency (if any) a disclosure is to be allocated;
- where appropriate, deeming a person to be a public official for the purposes of the PID Act;
- explaining the requirements of the PID Act and protections available to disclosers and potential disclosers;
- explaining to disclosers the circumstances in which a disclosure must be referred to another agency or body under another law (for example, referral to the NACC if the disclosure could involve serious or systemic corrupt conduct);
- determining whether personal work-related conduct included in a disclosure may be disclosable conduct (it will only be disclosable conduct if it concerns reprisal or has significant implications for an agency);
- deciding not to allocate the disclosure for investigation under the PID Act if satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power;
- allocating for investigation under the PID Act to an agency within the same portfolio if it would be better able to handle the disclosure;
- referring suspected systemic or serious corrupt conduct to the NACC;
- allocating an internal disclosure to the principal officer or an appropriately delegated disclosure investigator;
- assessing risks of reprisal and arranging a risk assessment of reprisal action;
- taking reasonable steps to protect public officials who belong to National Library from reprisal if the authorised officer suspects a relevant disclosure has been, may have been, is proposed to be, or could be made or given to an authorised officer;
- informing the principal officer of each relevant agency and the Ombudsman (or the Inspector-General of IGIS if appropriate) of the allocation decision and associated evidence;
- consenting to receive disclosures from another agency, where appropriate;
- notifying the Ombudsman when a disclosure is not allocated for investigation under the PID Act;
- advising the discloser of a decision not to allocate, the reasons why and any other course of action that may be available under Commonwealth law;
- notifying the Ombudsman when a stop action direction from the NACC prevents allocation of all or part of a disclosure;
- notifying the Ombudsman of the reallocation of a disclosure; and
- keeping information confidential and making written records of disclosures made.

² Source: Ombudsman fact sheet: New responsibilities and powers of Authorised Officers

Information for investigators³

Investigators in the National Library have a range of responsibilities and powers including:

- ensuring the investigation complies with the requirements of the PID Act and these Procedures;
- discretion not to investigate, or not investigate further, in accordance with s 48 of the PID Act;
- discretion not to investigate further where:
 - the information is the same or substantially the same as information previously disclosed under the PID Act and a decision was previously made to not investigate (or further investigate) the earlier disclosure; or
 - the conduct disclosed would be more appropriately investigated under another law or power;
- preparing an investigation report. The report must include claims of reprisal taken against the discloser or any other person (together with evidence), and the response to those claims or evidence. If remedial action is required, relevant recommendations must be made;
- completing the investigation within 90 days of allocation unless an extension has been granted. Time will start again on reallocation, a decision to reinvestigate, or the day the principal officer becomes aware a NACC stop action direction no longer applies;
- providing the discloser with notification of and copy of the investigation report;
- notifying the discloser and Ombudsman (or IGIS if relevant) of the completion of an investigation under the PID Act and provide a copy of the investigation report; and
- ensuring referral of suspected serious or systemic corruption uncovered in a disclosure investigation to the NACC.

³ Source: Ombudsman fact sheet: New responsibilities and powers of Authorised Officers

Information for supervisors⁴

- A public official may make a disclosure to their supervisor. A supervisor includes any public official who supervises or manages the discloser.
- Where a disclosure is made to a supervisor, the supervisor must make a written record of the disclosure, including the substance of the disclosure and the time and date of the disclosure.
- The supervisor should ask the discloser to sign the record of the disclosure, where it is reasonable and practicable.
- The staff member should be referred to where they can get more information about the disclosure process, namely from these Procedures or the Ombudsman.
- Where a public official discloses information to their supervisor and the supervisor has reasonable grounds to believe that the information could concern disclosable conduct, the supervisor must, as soon as practicable, give the information in a confidential manner to an authorised officer.
- The supervisor should seek consent to disclose the staff member's name and contact details to an authorised officer.
- The supervisor must not undertake an investigation of the disclosure to decide whether to give the information to an authorised officer.
- At the time a supervisor gives information to an authorised officer, they should also give the authorised officer their assessment of any risks of reprisal action that might be taken against the person who disclosed the information to the supervisor.
- The supervisor should support the staff member and monitor the situation for any possible reprisal or workplace conflict taking action or escalating the matter as appropriate.
- Where a supervisor has given information to an authorised officer, and where the supervisor is able to contact the discloser, they should inform the discloser that they have given the information to an authorised officer and advise the discloser of the name and contact details of that authorised officer.

⁴ Source: Ombudsman fact sheet: New responsibilities and powers of Authorised Officers

Information for disclosers and potential disclosers⁵

A potential discloser should not investigate a matter themselves before making a disclosure.

The disclosure can be made anonymously, or the discloser may use a pseudonym. The discloser does not have to consent to their name and contact details being provided to the principal officer (or delegate).

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.

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. The principal officer (or delegate) may have regard to the discloser's wishes.

Rights of disclosers

A discloser has rights to the protections set out in the PID Act, including protection from reprisals, from civil and criminal liability, and from the disclosure of their identity where the disclosure is made anonymously. However, a disclosure does not protect the discloser from the consequences of their own wrongdoing, including where they have been involved in the misconduct that they are reporting.

During the disclosure process (including the investigation), and where it is reasonably practicable to contact the discloser, the discloser will be updated on the progress of the matter, including:

- any decision that a disclosure does not meet the requirements of the PID Act and therefore will not be allocated;
- the allocation of the disclosure;
- any decision to exercise the discretion to not investigate the disclosure, as well as reasons for the decision and any other avenues which may be available to the discloser under other Commonwealth laws;
- any decision to investigate the disclosure;
- the estimated duration of the investigation into their disclosure;
- if an investigation is conducted under the PID Act and an extension of time is granted by the Ombudsman or IGIS, the progress of the investigation; and
- the outcome of the investigation including provision of a copy of the investigation report. The following material may be deleted from the copy of the report given to the discloser:
 - material that is likely to enable the identity of the discloser or another person;
 - material which would be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*;
 - material which would result in the document having, or being required to have, a national security or other protective security classification;

⁵ Source: Ombudsman fact sheet: New responsibilities and powers of Authorised Officers

- intelligence information; and
- information which would contravene a designated publication restriction as defined in the PID Act.

The discloser will be supported, including as outlined at part 3.8 of these Procedures.

Responsibilities of disclosers

The discloser must:

- comply with the PID Act requirements and these Procedures when making a disclosure;
- use their best endeavours to assist the principal officer of any agency in the conduct of an investigation;
- use their best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act;
- use their best endeavours to assist the IGIS in the performance of the IGIS's functions under the PID Act;
- use their best endeavours to assist the Commissioner in the performance of Commissioner's functions under NACC Act; and
- report to the Director-General any detriment the discloser believes they have been subjected to because of making the disclosure.

Rights and responsibilities of persons who are the subject of a disclosure⁶

Rights

A National Library employee who is the subject of a disclosure will be:

- given support in accordance with these Procedures;
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act; and
- entitled to procedural fairness during any investigation.

A person will not be subject to any criminal or civil liability because the person, voluntarily or otherwise, gives information, produces a document or answers a question where:

- they have done so where requested by a person conducting a disclosure investigation; and
- the information, document or answer is relevant to the investigation.

There are some limited exceptions to the protection available to witnesses. For example, there is no protection from liability for an offence against ss 137.1, 137.2, 144.1 or 145.1 of the *Criminal Code Act 1995* that relate to the information, document or answer (e.g. false and misleading information or documents, forgery).

There is also a common law privilege against self-incrimination. This means a person may refuse to answer any question, or to produce any document or thing, if to do so may expose the person to conviction for a crime.

There is also a common law penalty privilege. Natural persons (as distinct from corporations) can rely on the privilege against exposure to penalties in some contexts. The penalty privilege will allow a person to refuse to provide a document or answer a question if the document or answer may tend to expose the person to a penalty.

Responsibilities

A National Library employee who is the subject of a disclosure must

- use their best endeavours to assist the principal officer of any agency in the conduct of an investigation;
- use their best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act;
- use their best endeavours to assist the IGIS in the performance of the IGIS's functions under the PID Act;
- use their best endeavours to assist the Commissioner in the performance of Commissioner's functions under NACC Act;
- comply with action taken by the National Library to address risks or concerns in relation to the disclosure; and
- ensure their behaviour does not constitute reprisal action, or threats of reprisal action, against any person that they know or suspect may have made the disclosure.

An employee who is the subject of a disclosure should also be aware that the outcome of an investigation under these Procedures may result in another different investigation (for example, a Code of Conduct investigation) taking place.

⁶ Source: Ombudsman fact sheet: New responsibilities and powers of Authorised Officers

