

Public Interest Disclosure

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1. Purpose

This Procedure has been established under section 59 of the *Public Interest Disclosure Act 2013* (Cth) (the PID Act) for the purposes of facilitating and dealing with public interest disclosures relating to NOPSEMA.

The purpose of the PID Act is to promote integrity and accountability in the Commonwealth public sector and provide public officials with protection against victimisation or discrimination for making reports of suspected wrongdoing.

This Procedure should be read in conjunction with NOPSEMA's N-12100-PL1901 Public Interest Disclosure Policy (PID Policy).

2. What is a public interest disclosure?

A public interest disclosure may be an internal disclosure, an external disclosure, an emergency disclosure or a disclosure to a legal practitioner in accordance with section 26(1) of the PID Act. Note that not all disclosures of information made to NOPSEMA will be a public interest disclosure for the purposes of the PID Act and may not be protected by the PID Act.

Internal disclosures are the most common type of public interest disclosure under the PID Act. To make this type of disclosure, the person disclosing suspected wrongdoing must:

- be a current or former public official;
- make their disclosure to the correct person (i.e. their supervisor, an Authorised Officer or, where appropriate, the Commonwealth Ombudsman); and
- provide information that tends to show, on reasonable grounds, disclosable conduct as defined by the PID Act.

This Procedure focuses on internal disclosures.

2.1. Who can make a public interest disclosure?

2.1.1. Public Officials

A person must be a current or former Commonwealth public official to make a public interest disclosure in accordance with section 69 of the PID Act. This will include a member of the staff of NOPSEMA as a "prescribed authority" under section 72 of the PID Act.

Individuals who are contracted service providers are also public officials for the purposes of the PID Act. This includes contracted employees engaged through a recruitment agency; and subcontractors who are responsible for providing goods or services either directly or indirectly to agency covered by the PID Act for the purposes of a Commonwealth contract.

2.1.2. Deemed Public Officials

An Authorised Officer may deem an individual to be a public official if they reasonably believe the individual has information about wrongdoing and proposes to make a disclosure in accordance with section 70 of the

PID Act. The Authorised Officer will provide an individual with a written determination on whether they are deemed to be a public official for the purposes of the PID Act.

2.2. What is disclosable conduct?

The full definition of disclosable conduct is set out in section 29 of the PID Act. In summary, it includes conduct by an agency, public official or a government contractor that:

- contravenes a law of the Commonwealth, a State or a Territory;
- perverts, or attempts to pervert, the course of justice or involves corruption of any other kind;
- constitutes maladministration, including conduct that is based on improper motives, is unreasonable, unjust or oppressive or is negligent;
- is an abuse of public trust;
- is fabrication, falsification, or deception in relation to scientific research, or misconduct in relation to scientific work;
- results in the wastage of public money or public property or of the money or property of an authority covered by the PID Act;
- unreasonably endangers health and safety of a person or the environment.

It also includes conduct by a public official that:

- involves or is engaged in for the purposes of abusing their position as a public official; or
- could give reasonable grounds for disciplinary action (i.e. actions taken by an employer to correct and/or punish an employee's wrongdoing) against the public official.

2.3. Conduct that is or may not be disclosable conduct

If a public official has a complaint that either does not fall within the definition of disclosable conduct, or they are not sure whether it does, they should discuss this with a Workplace Contact Officer, Assistant Manager Human Resources or Manager Human Resources who may be able to advise on the best avenue to address their concerns.

2.4. Who are the Authorised Officers?

The Chief Executive Officer has appointed the following employees as Authorised Officers:

| Authorised Officer | Division |
|--------------------|-----------------------------------------------|
| David Christensen | Environment, Renewables and Decommissioning |
| Damien Cronin | Enabling Services and Business Transformation |
| Jeremy Dunster | Safety and Integrity |
| Nicholas Page | Office of the Chief Executive |
| John Townsend | Enabling Services and Business Transformation |

3. How to make a public interest disclosure to NOPSEMA

3.1. Disclosure to a supervisor or authorised officer

A disclosure must be made to the correct person in order to claim the protections available under the PID Act. NOPSEMA public officials can make a public interest disclosure to either their supervisor¹ or an Authorised Officer of NOPSEMA. Public officials external to NOPSEMA can make a public interest disclosure to an Authorised Officer of NOPSEMA or, where appropriate, a supervisor within their agency. It is recommended that public officials make disclosures directly to an Authorised Officer in the first instance because they have the relevant expertise. They should not investigate a matter themselves before making a disclosure.

A public official cannot withdraw a public interest disclosure once it has been made. They can decline to provide their consent to disclose their name and contact details or expressly state that they do not wish to have the matter investigated which may affect the decision to investigate a public interest disclosure.

3.2. Content of a disclosure

A public interest disclosure may be made verbally or in writing. The discloser should provide as much information and supporting evidence about the suspected wrongdoing as possible including:

- the nature and facts of the suspected wrongdoing, including whether it relates to an individual, contractor or agency; and
- any concerns about possible reprisal as a result of making the disclosure.

The information contained in a disclosure should be clear and factual, and should, as far as possible, avoid speculation, personal attacks and emotive language.

3.3. Identity of disclosers

A discloser may choose to remain anonymous, meaning that they do not identify themselves to anyone during the PID process. Anonymous disclosures will be acted on however, there may be limitations to how the matter can proceed through to an investigation.

3.4. Protection for the discloser

A public interest disclosure that complies with the provisions of the PID Act (even if it is later unsubstantiated) will entitle the discloser to the protections afforded by the PID Act. This includes:

- protection of the discloser's identity;
- immunity from civil, criminal or administrative liability; and
- support and protection from reprisal.

However, a public official who knowingly makes a false or misleading disclosure will not have any protections under the PID Act. If a public official discusses the details of their disclosure with anyone who does not need to know about it then these discussions will not have any protections under the PID Act.

A public official who is considering making a disclosure should be aware that making a disclosure does not entitle them to protection from the consequences of their own wrongdoing.

¹ A "supervisor" for the purposes of the PID Act is a public official who supervises or manages the person making the disclosure.

3.5. Disclosure to the Ombudsman

A public official can also make a disclosure to authorised officers of the Commonwealth Ombudsman if they believe on reasonable grounds that it would be appropriate for the Ombudsman to investigate the disclosure.

4. Receiving a public interest disclosure and initial assessment

4.1. Supervisors

A public interest disclosure can be received by a supervisor including where the discloser does not formally identify that the disclosure is made under the PID Act. If the disclosure is made verbally, the supervisor should record this in writing, including noting the time and date of the disclosure.

If the supervisor has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, they must give this information to an Authorised Officer as soon as reasonably practicable. The supervisor must inform the discloser that they have given the information to the Authorised Officer and provide them with the name and contact details of the Authorised Officer.

If the discloser's identity is ascertainable by the supervisor, they should obtain consent from the discloser before referring the disclosure to the Authorised Officer. If the discloser does not consent, then it may be appropriate to use a pseudonym or otherwise de-identify the disclosure. The supervisor should explain to the discloser that even if they do not consent to being identified, their identity may be able to be ascertained from the nature of the information or the circumstances of the disclosure.

Supervisors should also take the following steps:

- provide information to the discloser about the PID Act and NOPSEMA's policies and procedures;
- confirm with the discloser the information disclosed is understood (particularly if provided verbally); and
- advise the discloser of other support options, including NOPSEMA's Employee Assistance Program.

The supervisor who receives a disclosure must not discuss or disclose any information that was disclosed to them or identify the discloser, except for the purposes of:

- referring the information to the Authorised Officer;
- advising the discloser when the information has been referred; or
- assisting someone performing a function under the PID Act in relation to this disclosure.

4.2. Authorised Officers

Authorised Officers are responsible for receiving public interest disclosures from a public official² or a public official's supervisor. If the disclosure is received verbally, the Authorised Officer should record this in writing, including noting the time and date of the disclosure, and ask the discloser to endorse the record where practicable (for example by wet signature or confirmation by email).

If the Authorised Officer has reasonable grounds to believe that the discloser is unaware of the PID Act and has their contact details, the Authorised Officer must:

² Authorised officer may deem a person who is not a public official to be a public official – see section 70 PID Act.

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

The Authorised Officer, on receiving a valid disclosure, must consider the disclosed information and decide whether it meets the criteria for an internal disclosure under the PID Act. They must use their best endeavours to assess and allocate a disclosure within 14 days of receiving it (including making any appropriate enquiries to inform decision making), unless there is a good reason why they need further time. The Authorised Officer should record their decision in the relevant file.

If the Authorised Officer concludes that the disclosure does not meet the criteria, they must explain this to the discloser and advise of any other options they might have under Commonwealth law (for example, a review of action, code of conduct etc).

4.3. Risk Assessment

Reprisal occurs if someone causes, by an act or omission, any detriment to another person because they believe or suspect that person, or anyone else, may have made or intends to make a public interest disclosure.

An assessment of the risk of reprisals against the discloser must be conducted as soon as practicable following the receipt of a public interest disclosure. This assessment will determine:

- the likelihood of reprisals or related workplace conflict occurring; and
- the potential consequences if they do occur, including the discloser's immediate and long-term wellbeing and the cost to NOPSEMA.

The risk assessment will be conducted by the Authorised Officer receiving the disclosure. The only exception is where an employee makes a disclosure to their supervisor or manager and wishes to remain anonymous in which case the supervisor or manager will be responsible for conducting the risk assessment.

The discloser and the discloser's supervisor or manager are likely to be the best sources of information for conducting the risk assessment. The person conducting the risk assessment should refer to the checklist of risk factors contained in NOPSEMA's N-12100-FM1875 Risk of Reprisal Assessment.

Strategies will be put in place to prevent or manage any risks identified from the risk assessment. The risk assessment will be monitored and reviewed as necessary.

5. Allocating a disclosure

Where an Authorised Officer is satisfied that the requirements for a public interest disclosure have been met, they must allocate the handling of the disclosure to one or more agencies (including to NOPSEMA) within fourteen (14) days of receiving the disclosure and create a public interest disclosure file in Objective. In most cases, a disclosure should be allocated to the agency to which the disclosure relates (usually NOPSEMA). If the disclosure concerns conduct relating to another agency, the Authorised Officer must obtain consent from an Authorised Officer in that agency and then notify the Principal Officer of that agency.

If the Authorised officer decides to allocate a disclosure to NOPSEMA, they must inform the discloser and the Principal Officer of NOPSEMA (the CEO).

5.1. Informing the discloser of the allocation

As soon as practicable, the Authorised officer must inform the discloser that they have allocated their disclosure for handling under the PID Act. This communication should be recorded in writing (the template N-12100-FM1320 may be used for this purpose).

If it is not reasonably practicable to contact the discloser, the Authorised Officer is not required to notify the discloser of their allocation decision, however, this decision and reasons for it must still be recorded.

Prior to informing the CEO of NOPSEMA the allocation, the Authorised Officer must ensure they have the discloser's consent to pass their contact details on to the CEO. If the discloser declines, the Authorised Officer should inform the CEO. The discloser may choose to use a pseudonym or otherwise provide an anonymous means to be contacted so that they may be notified of progress in accordance with the PID Act.

5.2. Informing the CEO of the allocation

The Authorised Officer will inform the Principal Officer (CEO) of the allocation to NOPSEMA, the information that has been disclosed, the suspected disclosable conduct and the discloser's name and contact details (if consent has been provided).

The Authorised Officer will also provide a copy of the notification of the allocation to the Commonwealth Ombudsman by completing and submitting N-12100-FM1333 – Form 1 – Notification to Ombudsman of an Allocation Decision.

6. Investigating an allocated internal disclosure

6.1. Deciding whether to investigate

Once a disclosure has been allocated to NOPSEMA, the CEO must decide whether to investigate and notify the discloser of their decision within fourteen (14) days after the disclosure was allocated to NOPSEMA.

The discloser is required to be informed about the CEO's powers to decide:

- not to investigate the disclosure under the PID Act, or stop a PID investigation that has started; or
- to investigate the disclosure under a separate investigative power.

The CEO may delegate any of their functions and powers, including whether to investigate, to a public official who belongs to NOPSEMA. Any delegation of powers must be recorded in writing.

In accordance with section 48 of the PID Act, the CEO (or their delegate) may decide not to investigate or discontinue a current investigation where:

- the discloser is not a current or former public official;
- the information does not, to any extent, concern serious disclosable conduct;
- the disclosure is frivolous or vexatious;
- the disclosure is substantially the same as a disclosure that has been investigated or is being investigated under the PID Act;
- the disclosure is substantially the same as a disclosure that has already been investigated, or is currently being investigated, under another Commonwealth law and:
 - it would be inappropriate to conduct another investigation at the same time; or
 - the Principal Officer (CEO) is reasonably satisfied that there are no matters that warrant further investigation;

- the discloser has informed the Principal Officer (CEO) that they do not wish the disclosure to be pursued and the Principal Officer (CEO) is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation; or
- it is impracticable to investigate the disclosure because:
 - the discloser has not revealed their name and contact details;
 - 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.

Note that a decision not to investigate under the PID Act does not prevent any other type of investigation into the matter.

6.2. Notifying of an investigation decision

A decision to investigate an allocated disclosure and the estimated length of the investigation by the CEO (or delegate) must be notified to the discloser as soon as practicable; for further details refer to N-12100-FM1323 Notice to discloser of investigation of disclosure.

A decision not to investigate, or not to continue to investigate, an allocated internal disclosure by the CEO (or delegate) must be notified as soon as practicable to the:

- discloser, including reasons for the decision and any other courses of action that might be available under Commonwealth laws (refer to N-12100-FM1322 Notice to discloser of decision not to investigate or to stop investigating disclosure); and
- Commonwealth Ombudsman (refer to N-12100-FM1318 Notification to Ombudsman of decision not to investigate or to stop investigating).

6.3. Conducting an investigation

6.3.1. Objectives

The objectives of the investigation are to:

- collate information relating to the allegation as quickly as possible;
- consider the information collected and draw conclusions objectively and impartially; and
- provide a report on the conclusions drawn.

6.3.2. Principles

The CEO or delegated investigator (Investigator) will conduct the investigation in accordance with the PID Act, the Public Interest Disclosure Standard 2013 (Cth), any other relevant Commonwealth legislation and guidelines and the following principles:

- they must be independent and unbiased in the matter;
- they must ensure that they do not have a conflict of interest in the matter;
- they must ensure that a decision on whether evidence is sufficient to prove a fact is made on the balance of probabilities;
- they must ensure there is procedural fairness; and
- they must maintain strict confidence as it is an offence for a person to disclose or use information obtained in the course of conducting a disclosure investigation or in connection with their powers and functions under the PID Act unless the disclosure or use is for the purposes of the PID Act or the information has previously been lawfully published.

Where there are insufficient resources within NOPSEMA to conduct the investigation, the CEO or Investigator may engage the services of an external investigator to support the investigation process where

appropriate. Advice regarding engagement appropriate workplace investigators should be sought from the Manager Human Resources or Assistant Human Resources Manager.

6.3.3. Collecting information

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

If the CEO or Investigator conducts interviews of witnesses as part of the investigation, they do not have powers to compel witnesses to attend interviews, answer questions or produce documents. However, they must, subject to any restrictions imposed by Commonwealth law other than the PID Act, inform the witness of the following:

- the identity and function of each person conducting the interview;
- the process of conducting an investigation;
- the CEO/Investigator's authority to conduct an investigation under the PID Act;
- the protections provided to the witness by section 57 of the PID Act; and
- the witness'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 any privilege against self-incrimination or exposing themselves to a penalty);
 - not to take or threaten to take reprisal action against the discloser; and
 - not to disclose the identity of the discloser .

The CEO or Investigator must also ensure that:

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

If the CEO or Investigator is aware of the discloser's identity and considers that it is necessary to reveal the discloser's identity to an interviewee, they must consult with the discloser before proceeding where practicable.

6.3.4. Procedural fairness

During an investigation, the investigator must ensure that a person against whom allegations are made is accorded procedural fairness, meaning that a person is entitled to:

- have a decision maker act fairly and without bias;
- know the substance of allegations and evidence against them if an adverse finding will be made about their conduct; and
- be given a reasonable opportunity to respond.

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. It also does not entitle a person alleged of wrongdoing to a right to know the identity of the discloser.

6.3.5. Evidence and standard of proof

The CEO or Investigator must ensure that a disclosure is investigated on the basis that a decision whether evidence is sufficient to prove a fact must be determined on the balance of probabilities.

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

The CEO or Investigator must ensure that the evidence that is relied on in an investigation is relevant. This generally means that the evidence 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.

6.3.6. Confidentiality

All steps in the investigation should be conducted confidentially and in private. In particular, the identity of the discloser, any witnesses and the person alleged to have engaged in disclosable conduct is not to be revealed except where this is reasonably necessary for the effective investigation of the disclosure or where consent has been given.

Any interviews with the discloser are to be arranged so as to avoid, to the extent practicable, the identification of the discloser by other persons. For example, meeting requests (and associated email addresses) in staff calendars may be visible to other staff.

6.3.7. Referral of information to the police

If the CEO or Investigator suspects on reasonable grounds that some of the information disclosed or obtained during the course of the investigation is evidence of the commission of an offence against a Commonwealth, state or territory law, they may disclose the information to a member of the relevant police force. However, if the information relates to a serious offence that is punishable by imprisonment for a period of at least two years, they must notify the relevant police force.

6.3.8. Time limits

Investigations must be completed, including the preparation of the report, within 90 days of the date the matter was allocated for investigation. The CEO or Investigator can seek one or more extensions of time from the Ombudsman. A request for an extension of time should be made well before the expiry of the 90 day period and should include the 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.

If an extension is granted, the CEO or Investigator must also let the discloser know, as soon as reasonably practicable after the extension is granted, about the progress of the investigation.

An investigation that is not completed within time does not become invalid. However, an extension should still be sought as the discloser may decide to release the information publicly on the basis that the investigation was not completed within the timeframe (i.e. an external disclosure).

6.4. Report

The CEO or Investigator will prepare an investigation report in accordance with section 51 of the PID Act and Part 4 of the PID Standard which must set out:

- the matters considered during the investigation;
- the duration of the investigation;
- the CEO or Investigator's findings (if any);
- the action (if any) that is being or is recommended to be taken;
- any claims or evidence of detrimental action against the discloser and NOPSEMA's response to those claims;

Where relevant, the report must also:

- identify whether there have been one or more instances of disclosable conduct;
- identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates;
- explain the steps taken to gather evidence; and
- set out a summary of the evidence, as well as any findings and recommendations made based on that evidence.

If the CEO or Investigator has the discloser's contact details, they must, as soon as practicable, advise the discloser that the investigation report has been completed and whether it was completed within the specified time limit by using N-12100-FM1326 Notice to discloser of completion of investigation form and provide a copy of the investigation report.

The CEO or Investigator, where appropriate, may delete from the copy of the investigation report given to the discloser any material:

- that is likely to enable the identification of the discloser or another person; or
- the inclusion of which would result in the copy being a document:
 - that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982* (Cth);
 - having, or being required to have, a national security or other protective security classification;
 - containing intelligence information; or
- contravening a designated publication restriction (within the meaning of the PID Act).

It may be appropriate to notify the person or persons who were the subject of the disclosure the outcome of the investigation. However, it is unlikely to be appropriate to provide to them a copy of the investigation report unless such a disclosure complies with s 65(2) of the PID Act.

6.5. Discloser not satisfied with NOPSEMA's actions

If a discloser is unhappy with the process or who they have been treated by NOPSEMA, they may complain to the Commonwealth Ombudsman. Note that a reasonable belief by a discloser that NOPSEMA's investigation or response to the investigation was inadequate is one of the conditions of making an external disclosure as outlined in section 2.2.

7. Protecting Confidentiality

It is an offence for a person who has information obtained in the course of conducting a disclosure investigation or in connection with their powers and functions under the PID Act to disclose or use the information (subsection 65(1) PID Act). However, the exception to this is if:

- the disclosure or use of the information is for the purposes of the PID Act or in connection with the person's powers and functions under the PID Act;
- the disclosure or use is for the purposes of, or in connection with, taking action in response to a disclosure investigation; or
- the information has previously been lawfully published and is not intelligence information (or if it is intelligence information, that the source agency has consented to the disclosure or use).

Accordingly, only individuals directly involved in dealing with the public interest disclosure (primarily the Principal Officer and Authorised Officers) or who are responsible for ensuring NOPSEMA's compliance with the PID Act may be advised of the details of the disclosure. These individuals must not disclose any information which is likely to reveal the identity of the discloser or any information which is likely to reveal the identity of the discloser without the consent of the discloser.

8. Record Keeping

The CEO, delegates (including Investigators) and Authorised Officers must keep records relating to this procedure in accordance with NOPSEMA's N-15000-PL0215 Records Management Policy. This includes keeping copies of forms sent to the discloser and Ombudsman.

Access to these records will be restricted to the Authorised Officers, CEO and/or their delegates (including Investigators) or other employees who require access in order to perform some function under the PID Act or for the purposes of another Commonwealth law.

9. Monitoring and Evaluation

Authorised Officers are required to provide a quarterly report to the Principal Officer specifying the number of public interest disclosures they received and the nature of the disclosable conduct for each disclosure by making reference to the relevant item or paragraph in the definition of public interest disclosure. This report should include any disclosures that have been allocated to NOPSEMA by another agency's Authorised Officer.

NOPSEMA will appoint a monitoring delegate to prepare the agency's annual report to the Commonwealth Ombudsman on disclosures made during the financial year. Authorised Officers and Investigators must provide any relevant information to the monitoring delegate. The final report will be submitted by the Principal Officer to the Commonwealth Ombudsman within the specified timeframe.

10. References

Public Governance, Performance and Accountability Act 2013 (Cth)

Public Interest Disclosure Act 2013 (Cth)

Public Service Act 1999 (Cth)

Public Interest Disclosure Standard 2013 (Cth)

Commonwealth Ombudsman "Agency Guide to the Public Interest Disclosure Act 2013"

N-07400-PL1476 Fraud and Corruption Control Plan

N-12000-PL0339 Code of Conduct Policy

N-12000-PL0800 Resolving Workplace Issues and Disputes Policy

N-12100-PL1901 Public Interest Disclosure Policy

N-15000-PL0215 Records Management Policy

N-12100-GL1327 Authorised Officer Responsibilities

N-12100-GL1328 Investigator Responsibilities

N-12100-GL1329 Principal Officer Responsibilities

N-12100-GL1330 Supervisor and Manager Responsibilities

N-12100-IP1332 Public Interest Disclosure Flowchart

N-12100-IP131 Frequently Asked Questions

N-12100-FM1333 Form 1 – Notification to Ombudsman of an allocation decision

N-12100-FM1318 Form 2 – Notification to Ombudsman for an extension of time to investigate a PID

N-12100-FM1319 Form 3 – Request to Ombudsman for an extension of time to investigate a PID

N-12100-FM1320 Notice to discloser of allocation

N-12100-FM1321 File Note – notice of allocation and informing the discloser

N-12100-FM1322 Notice to discloser of decision not to investigate or stop investigating disclosure

N-12100-FM1323 Notice to discloser of investigation of disclosure

N-12100-FM1326 Notice to discloser of completion of investigation

N-12100-FM1875 Risk of Reprisal Assessment