

# Public Interest Disclosure

Document No: N-12100-SOP1331 A686549

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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 (PIDs) 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 PID may be an internal disclosure, an external disclosure, an emergency disclosure, a legal practitioner disclosure or a National Anti-Corruption Commission (NACC) disclosure in accordance with sections 26(1) and 26(1A) of the PID Act and section 23 of the *National Anti-Corruption Commission Act 2022* (the NACC Act). Note that not all disclosures of information made to NOPSEMA will be a 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 (or deemed to be a public official)
- make their disclosure to the correct person (i.e. their supervisor, an Authorised Officer or, where appropriate, the Commonwealth Ombudsman)
- 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

An individual must be a current or former Commonwealth public official to make a public interest disclosure under the PID Act. At NOPSEMA, a public official will include:

- an APS employee of NOPSEMA
- individuals who are officers and employees of contracted service providers, such as employees engaged through a recruitment agency and subcontractors who are responsible for providing goods or services either directly or indirectly to NOPSEMA for the purposes of a Commonwealth contract

- an individual deemed by an Authorised Officer in writing to be a public official if they reasonably believe that the individual has information about wrongdoing and proposes to make a disclosure.

Individuals who are a Member of Parliament, individuals employed under the *Members of Parliament (Staff) Act 1984* (Cth), a judicial officer, a member of a Royal Commission or a grant recipient are not public officials for the purposes of the PID Act.

### 2.1.2. Public officials performing their ordinary functions

A public official whose ordinary functions include sharing information about wrongdoing with their supervisor or an Authorised Officer (e.g. fraud control, case management or protective security) will not meet the requirements for an internal disclosure if the disclosure is made in the course of performing the discloser's ordinary functions as a public official. If a public official in such a role intends to make a public interest disclosure, they will need to clearly express that intent when making the disclosure.

## 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 in connection with their position 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 or is unreasonable, unjust or oppressive or is negligent
- is an abuse of public trust
- is fabrication, falsification, plagiarism 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
- is prescribed by the PID rules.

It also includes conduct by a public official that:

- involves abuse of the public official's position
- could, if proved, give reasonable grounds for disciplinary action resulting in the termination of the official's engagement or appointment.

There are no time limits for making a disclosure. A disclosure can be made about conduct that occurred at any time, including before the PID Act commenced.

## 2.3. Who are the Authorised Officers?

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

Authorised Officer	Division	Contact Information
David Christensen	Regulatory Operations	Telephone: (08) 6188 8801

		Email: david.christensen@nopsema.gov.au
Julie Kordic	Corporate and Business Transformation	Telephone: (08) 6188 8968 Email: julie.kordic@nopsema.gov.au
Simon Korzec	Corporate and Business Transformation	Telephone: (08) 6188 8855 Email: simon.korzec@nopsema.gov.au

### 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 supervisor<sup>1</sup> 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 disclosure can also be made directly to the Commonwealth Ombudsman if the discloser believe on reasonable grounds that it would be reasonable to do so in accordance with sections 26(1) and 34 of the PID Act or to the NACC.

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.

Individuals cannot jointly make a single public interest disclosure. However, two or more individuals may each make their own public interest disclosure about the same conduct.

#### 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
- 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 – anonymity and pseudonymity

A discloser may choose to remain anonymous, meaning that they do not identify themselves to anyone during the public interest disclosure process (they do not provide a name or contact details). They may also choose to use a pseudonym (a non-identifying fictitious name). Such disclosures are still treated as a disclosure, however, there may be limitations to how the matter can proceed through to an investigation. For example, an Authorised Officer may need to exercise the power in s 70 to determine on their own initiative that a person who has disclosed information to them is a public official. However, if the

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

Authorised Officer cannot contact the discloser, then no determination can be made as a written notice is required to be given to the discloser.

## 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 a 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.

Upon receipt of a disclosure, supervisors must:

- If they have reasonable grounds to believe that the information (in the disclosure) concerns, or could concern, disclosable conduct, give this information to an Authorised Officer as soon as reasonably practicable, ensuring they obtain the discloser's consent before disclosing any identifying information (such as name, contact details)<sup>2</sup>
- explain to the discloser the procedures under the PID Act for their disclosure to be given to an authorised officer, allocated to NOPSEMA or another agency and investigated by principal officer of that agency
- confirm with the discloser the information disclosed is understood (particularly if provided verbally)
- inform the discloser that the disclosure could be treated as an internal disclosure for the purposes of the PID Act
- advise of the circumstances in which a PID must be referred to another agency, person or body under another law of the Commonwealth
- explain to the discloser the civil and criminal protections that the PID Act provides to disclosers and those assisting the handling of a public interest disclosures, from reprisals.

A supervisor may also wish to advise the discloser of other support options, including NOPSEMA's Employee Assistance Program.

The supervisor who receives a disclosure must not 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
- assisting someone performing a function under the PID Act in relation to this disclosure.

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<sup>2</sup> 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.

## 4.2. Authorised Officers

### 4.2.1. Public Interest Disclosures

Immediately on receiving a disclosure, if a 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 for their consent to record their name and contact details (noting the public official is entitled to remain anonymous if they choose).

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:

- 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
- explain the circumstances in which a public interest disclosure must be referred to another agency, person or body under a law of the Commonwealth
- advise the discloser of any orders or directions that may affect disclosure of the information.

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).

### 4.2.2. Mandatory referrals to the National Anti-Corruption Commission

Under the NACC Act, certain officers under the PID Act (defined as 'PID Officers') are required to report certain conduct to the NACC. These officers include:

- Authorised officers
- those officers who have functions and powers relating to investigating internal disclosures.

If a PID Officer receives a disclosure under the PID Act that raises a corruption issue under the NACC Act, as soon as reasonably practicable, they must refer it to the NACC where:

- the corruption issue concerns the conduct of a person who is, or was, an employee of NOPSEMA while that person is, or was, an employee of NOPSEMA
- the PID officer suspects the issue could involve serious or systemic corrupt conduct.

The PID officer must also notify the discloser of this referral as soon as practicable.

The only exceptions to reporting the conduct are where the PID Officer believes, on reasonable grounds, that the NACC Commissioner is already aware of the corruption issue, or the Commissioner has decided a referral is not required.

For definitions of corrupt conduct and corruption issue, see the NACC Act, NACC Guideline on 'What is Serious or Systemic Corrupt Conduct?' and NOPSEMA's Fraud and Corruption Control Plan N-07400-PL1476.

NOPSEMA will continue to investigate a public interest disclosure under the PID Act where a referral has been made to the NACC. The only exception is where the NACC Commissioner, in consultation with NOPSEMA's Chief Executive Officer, issues a direction to stop taking a particular action, or any action at all, to ensure the effectiveness of any action they have taken, or may take, in relation to the corruption issue. In these circumstances, NOPSEMA will notify the Commonwealth Ombudsman of the stop action direction by submitting a [Form 6 - Notification of a Stop Action direction](#).

#### **4.2.3. Provision of information to the NACC**

When making a referral to the NACC, the PID Officer must provide all relevant information relating to the corruption issue in their possession, or control and the reason why they suspect the issue could involve corrupt conduct that is serious or systemic. This includes (but is not limited to):

- the names of any public officials who the PID Officer suspects has engaged in serious or systemic corrupt conduct
- the names of any private individual or entities involved
- a description of the conduct
- the dates and timeframes 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
- any other relevant information.

If the PID Officer becomes aware of new information after making the referral, they must provide it to the NACC as soon as practicable.

The PID Officer will not be required to provide information about a corruption issue to the NACC where:

- the PID Officer believes on reasonable grounds that the NACC Commissioner is already aware of the information
- the NACC Commissioner has advised that the information is not required
- the information is subject to an exempt secrecy provision<sup>3</sup>
- the Attorney-General has certified that disclosing the information would be contrary to the public interest because it would harm Australia's international relations
- a secrecy provision that is a provision of taxation law
- a secrecy provision in another law that says is still applies despite the NACC Act.

### **4.3. Risk Assessment**

A reprisal risk assessment will be conducted for each PID (including NACC disclosures) and reviewed as required throughout the course of a PID investigation.

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<sup>3</sup> Refer to Part 11 Anti-Money Laundering and Counter-Terrorism Financing Act 2006, s34 *Inspector-General Intelligence and Security Act 1986*, secrecy provisions under the My Health Records Act 2012, s45 & s45B *Surveillance Devices Act 2004* and s63 & s133 *Telecommunications (Interceptions and Access) Act 1979*.

An assessment of the risk of reprisals against the discloser will usually be conducted by the Authorised Officer, as soon as practicable<sup>4</sup>, following the receipt of a public interest disclosure. This assessment should involve assessing the specific behaviour and circumstances that may result in reprisals. The following framework may be used in assessing the risk of reprisals:

- identifying whether there are reprisals or workplace conflict problems in the workplace, or if they have the potential to be problems
- assessing the likelihood and consequence of reprisals or related workplace conflict
- identifying what controls/strategies should be put in place to prevent or contain reprisals or related workplace conflict
- monitoring and reviewing to ensure strategies have been implemented and are effective.

The discloser and the discloser's supervisor 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 for Disclosers, Witnesses and Other Relevant Professionals.

## 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 14 days of receiving the disclosure. The 14-day timeframe commences after:

- the day the disclosure is made to them
- the Principal Officer receives the recommendation about an allocation
- the day when they become aware that a stop action from the NACC no longer applies.

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).

If the Authorised Officer decides not to allocate a disclosure, or is prevented from doing so by a NACC stop action direction, they must inform:

- the discloser
- the Principal Officer
- the Commonwealth Ombudsman by submitting a [Form 4 - Notification of decision not to allocate](#).

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<sup>4</sup> The only exception is where a public official makes a disclosure to their supervisor and wishes to remain anonymous, in which case the supervisor may be responsible for conducting the risk assessment

## 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 and this communication should be recorded in writing.

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 of 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 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
- to investigate the disclosure under a separate investigative power.

## 5.2. Informing the CEO of the allocation

The Authorised Officer will inform the 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 [Form 1 - Notification of an allocation decision or reallocation decision](#).

## 6. Investigating an allocated internal disclosure

### 6.1. Informing discloser of CEO powers

Within 14 days of a disclosure being allocated to NOPSEMA, the CEO must inform the discloser of their powers to decide:

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

### 6.2. Deciding whether to investigate

#### 6.2.1. Decision to investigate

Once a disclosure has been allocated to NOPSEMA, section 47 of the PID Act requires the principal officer of an agency (NOPSEMA CEO) to investigate a disclosure allocated to that agency for handling under the PID Act.

The CEO may delegate any of their functions and powers, including whether to investigate, to a public official who belongs to NOPSEMA (the delegate could be a NOPSEMA employee, or a person contracted to conduct the particular investigation<sup>5</sup>). Advice regarding engagement appropriate workplace investigators

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<sup>5</sup> See s 7.3.2.1 of the Commonwealth Ombudsman's *Agency Guide to the PID Act – Version 2*; regarding delegating investigative functions to an external contractor



should be sought from the Director People, Culture and Safety, and any delegation of powers must be recorded in writing.

The discloser must be notified of a decision to investigate an allocated disclosure and the estimated length of the investigation by the CEO or delegate, as soon as practicable, after a decision is made to investigate.

### 6.2.2. Decision not to investigate

In accordance with section 48 of the PID Act, the CEO or 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 information is the same, or substantially the same as information previously disclosed under the PID Act
  - a decision was previously made under s 48 not to investigate the earlier disclosure
  - the earlier disclosure has been, or is being investigated as a disclosure.
- the conduct disclosed, or substantially the same as conduct, is being investigated under another law or power and the CEO or delegate is satisfied on reasonable grounds that it would be inappropriate to conduct an investigation under the PID Act at the same time
- the conduct disclosed, or substantially the same conduct, has been investigated under another law or power, and the CEO or delegate is satisfied on reasonable grounds that there are no matters that warrant further investigation
- the discloser has informed the CEO or delegate that they do not wish the disclosure to be pursued and the CEO or delegate is satisfied on reasonable grounds that there are no matters concerning the disclosure that warrant investigation
- it is impracticable to investigate the disclosure because:
  - the discloser has not provided their name and contact details
  - the discloser has refused, failed or is unable to give the information they requested
  - 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.

Once the CEO or delegate decides not to investigate a PID under one of the grounds in s 48 of the PID Act, as soon as reasonably practicable they must notify:

- the discloser, including reasons for the decision and any other courses of action that might be available under Commonwealth laws
- Commonwealth Ombudsman by submitting a [Form 2 - s48 Decision not to investigate or not to further investigate under the PID Act](#).

## 6.3. Conducting an investigation

### 6.3.1. PID Investigation Requirements

The CEO or delegate will conduct the investigation under the PID Act as they see fit, subject to the need to comply with the Public Interest Disclosure Standard 2013 (PID Standard), NACC Act (where applicable) and observe other relevant Commonwealth legislation and guidelines.

### 6.3.2. Collecting information

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

If the CEO or delegate 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 comply with s 10 of the PID Standard, which includes informing the witness of the following:

- the identity and function of each person conducting the interview, including anyone present to assist with record keeping
- that the CEO/delegate is required to investigate a disclosure to establish whether there has been disclosable conduct
- the CEO/delegate's legal authority to conduct an investigation under the PID Act (e.g. where the CEO's power has been delegated)
- general information about the process of conducting a PID investigation including confidentiality requirements and protection of the discloser's identity
- the protections provided to the witness under the PID Act.

The CEO, or delegate, may also wish to remind the witnesses of their obligations, including:

- 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
- not to disclose the identity of the discloser.

The CEO or delegate must also ensure that:

- audio and/or visual recordings of interviews are 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
- any final statement, comment or position by the witness is included in the record of interview.

### 6.3.3. Procedural fairness

During an investigation, the CEO or delegate must ensure that a person, against whom allegations are made, is afforded 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
- 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.

#### **6.3.4. 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.

#### **6.3.5. Confidentiality**

All steps in the investigation should be conducted confidentially and in private, to the extent possible. In particular, the identity of the discloser and 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 (including because of the need to afford procedural fairness). See further below for NOPSEMA's handling of confidentiality and record keeping at items 8 and 9.

#### **6.3.6. Referral of information to the police and NACC**

If the CEO or delegate 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 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, unless the offence forms part of a corruption issue that has been referred to the NACC Commissioner.

If the CEO or delegate uncovers suspected serious or systemic corruption during an investigation, they must ensure that the matter is referred to the NACC.

#### **6.3.7. 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 time to be taken for an investigation will recommence where a public interest disclosure is reallocated, a decision is made to reinvestigate, or the day the Principal Officer becomes aware that a NACC stop action direction no longer applies.

The CEO or delegate can seek one or more extensions of time from the Commonwealth 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. This request should be made by submitting a [Form 3 - Extension of time to investigate a PID](#) to the Commonwealth Ombudsman.

If an extension is granted, the CEO or delegate 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 delegate, will prepare an investigation report in accordance with section 51, which must set out (according to part 4 of the PID Standard):

- the matters considered in the investigation
- the duration of the investigation
- the steps taken to gather evidence
- a summary of the evidence and how the evidence informed the findings
- the CEO or delegate'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 or any other person and NOPSEMA's response to those claims and evidence.

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
- set out a summary of the evidence, as well as any findings and recommendations made based on that evidence.

If the CEO or delegate has the discloser's contact details, they must as soon as practicable, advise the discloser that the investigation report has been completed, whether it was completed within the specified time limit and provide them with a copy of the report.

The CEO or delegate, 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
- 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.
- contravening a designated publication restriction (within the meaning of the PID Act).

## 6.5. Actions in response to Investigation recommendations

The CEO will take appropriate action as soon as reasonably practicable in response to recommendations made in the report. This may include, for example, notifying the person or persons who were the subject of the disclosure the outcome of the investigation.

The CEO must notify the Commonwealth Ombudsman of the completion of the investigation by submitting a [Form 5 - Notification of a finalised PID investigation](#) and providing them with a copy of the investigation report.

## 6.6. Discloser not satisfied with NOPSEMA's actions

A discloser may be unhappy with a decision not to investigate a matter, or if it was investigated, they may believe that the investigation, or NOPSEMA's response, was inadequate. 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. For more information regarding external disclosures, see Ombudsman's Agency Guide to the Public Interest Disclosure Act 2013 (section 2.7.7).

If a discloser is unhappy with the process or how they have been treated by NOPSEMA, they may also complain to the Commonwealth Ombudsman.

## 7. Protections and support for the discloser, witnesses and potential disclosers

The PID Act provides a number of protections where a disclosure meets the requirements of the PID Act (even if it is later unsubstantiated) including:

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

It is an offence to engage in conduct that constitutes reprisal action, and a reprisal risk assessment will be conducted for each PID (see above at item 4.3).

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.

NOPSEMA will take reasonable steps to encourage and support public officials who make, or are considering making, public interest disclosures as well as witnesses involved in PIDs. This may include taking one or more of the following actions:

- advising them of availability of NOPSEMA's Employee Assistance Program, including additional sessions where appropriate
- where there are concerns about the health and wellbeing, providing support from NOPSEMA's Workplace Contact Officers and Human Resources and Safety Team (ensuring confidentiality requirements under the PID Act are not contravened)

- implementing any actions/outcomes of the risk assessment (e.g. appointing a support person or transferring staff to different areas within the workplace with consent).

## 8. 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
- 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 CEO, delegates and Authorised Officers) or others who are responsible for ensuring NOPSEMA's compliance with the PID Act (e.g. Human Resources & Safety and Legal, Risk and Governance Directorate) should have access to details of the disclosure. These individuals must not disclose any information which is likely to reveal the identity of the discloser without the consent of the discloser.

## 9. Record Keeping

The CEO, delegates (including Investigators) and Authorised Officers must store all records received and generated in relation to PIDs in accordance with NOPSEMA's N-15000-PL0215 Information Management Policy. This includes keeping copies of forms sent to the discloser and Commonwealth Ombudsman and making written records of verbal disclosures. Access to all records associated with PIDs will be restricted to the Authorised Officers, CEO and/or their delegates, or other employees who require access in order to perform some function under the PID Act or for the purposes of another Commonwealth law. This includes all paper and electronic documents and files (and audio video recordings of interviews if applicable).

## 10. Monitoring and Evaluation

Authorised Officers are required to provide a biannual report to the CEO 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 biannual 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.

## 11. References

*National Anti-Corruption Commission Act 2022 (Cth)*

*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)

National Anti-Corruption Commission "What is Serious or Systemic Corrupt Conduct?"

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

N-07400-PL1476 Fraud and Corruption Control Plan

N-12000-PL0797 Employee Assistance Program Policy

N-12000-PL0339 Code of Conduct Policy

N-12000-PL0800 Resolving Workplace Issues Policy

N-12100-PL1901 Public Interest Disclosure Policy

N-15000-PL0215 Information Management Policy

N-12100-FM1875 Risk of Reprisal Assessment for Disclosers, Witnesses and Other Relevant Professionals