



Procedures for facilitating and dealing with public interest disclosures

I make the following procedures under section 59 of the *Public Interest Disclosure Act 2013* (Cth) (**PID Act**) for facilitating and dealing with public interest disclosures.

I revoke any earlier procedures.

These procedures commence on 1 November 2023.

David N Anderson

Managing Director

(Principal Officer of the ABC for the purposes of the PID Act)

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1. Introduction

This document sets out the basic requirements and information for facilitating and dealing with public interest disclosures that relate to the ABC.

The ABC is committed to high standards of ethical and accountable conduct. The ABC's public interest disclosure scheme supplements existing procedures for reporting suspected wrongdoing, and provides support, guidance and protection to persons in relation to disclosures made under the PID Act.

2. What is the purpose of the PID Act?

The PID Act aims to promote the integrity and accountability of the Commonwealth public sector by:

1. encouraging and facilitating the making of disclosures of wrongdoing by public officials;
2. ensuring that public officials who make disclosures are protected from adverse consequences; and
3. ensuring that public interest disclosures are properly investigated and dealt with.

3. What is a public interest disclosure (PID)?

A public interest disclosure (**PID**) may be an internal disclosure, an external disclosure, an emergency disclosure, a legal practitioner disclosure or a NACC disclosure. An internal disclosure is the most common type of PID under the PID Act and is the focus of these procedures.

To make an internal public interest disclosure about conduct occurring at the ABC, the person disclosing the suspected wrongdoing must:

- be a current or former public official, or be deemed to be a public official (see section 4 below);
- make the disclosure to their supervisor or manager, or to an Authorised Officer (see section 10 below);
- provide information that tends to show, or the discloser believes on **reasonable grounds** that the information tends to show, disclosable conduct (see section 5 below) that was carried out by:
 - another public official in connection with their position as a public official; or
 - an agency.

If all three of the criteria listed above are met, the disclosure will be a PID covered by the PID Act and the discloser will have the benefit of the protections that the PID Act confers.



Figure 1 – steps involved in making a PID



The focus of the PID scheme is on disclosure within the Commonwealth public sector. In limited circumstances a public official may disclose disclosable conduct to a person outside the Commonwealth public sector – this is known as an external disclosure or emergency disclosure. A public official can also make a disclosure to a legal practitioner for the purpose of getting legal advice about making one of the other forms of PID. If disclosable conduct concerns corruption, a public official can refer the matter to the [National Anti-Corruption Commission](#) (NACC). Further information about these kinds of PIDs is available on the [Commonwealth Ombudsman’s website](#).

4. Who is a public official?

A person must be a current or former ‘public official’ to make a PID.

Public officials of the ABC include the Managing Director, all ABC employees (ongoing, fixed term, specified task, casual), members of the ABC Board and the ABC Advisory Council, an individual who is a contracted service provider to the ABC (including independent contractors and suppliers), and an individual who is an officer or employee of a contracted service provider to the ABC.

An Authorised Officer may deem a person to be a ‘public official’ if the person proposes to disclose information to the Authorised Officer that the Authorised Officer reasonably believes concerns disclosable conduct (for example, this could occur when a disclosure has been made anonymously).

5. What is disclosable conduct?

In summary, disclosable conduct includes conduct by the ABC, a public official, or a contractor to the ABC that:

- contravenes an Australian law;
- perverts the course of justice;
- is corrupt;
- constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent;
- is an abuse of public trust;
- results in wastage of public money or public property;

- unreasonably endangers health or safety;
- endangers the environment;
- involves or is engaged in for the purposes of abusing their position as a public official; or
- could, if proved, give reasonable grounds for disciplinary action resulting in termination of the public official's engagement or appointment.

Exclusion of personal work-related conduct

Personal work-related conduct is where one public official engages in conduct that relates to another public official's engagement, appointment or the exercise of their functions or powers, and the conduct has personal implications for that second public official. It includes the following types of conduct:

- interpersonal conflict, including bullying or harassment;
- decisions about a person's employment, engagement, transfer or promotion, including decisions to suspend, terminate, or discipline a person, or about the terms and conditions of a person's employment or engagement; or
- conduct in relation to which a public official has or had review rights under the terms and conditions of their engagement or appointment.

Personal work-related conduct is not disclosable conduct under the PID Act unless one of the following exceptions applies:

- the conduct would constitute reprisal action under section 19 of the PID Act; or
- the conduct is of such a significant nature that it would undermine public confidence in, or has other significant implications for, an agency (or agencies).

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

See section 8 below for how to report concerns about personal work-related conduct.

6. Who is an authorised internal recipient?

Any of the Authorised Officers appointed by the ABC is an authorised internal recipient.

A supervisor or manager of the public official making the report is also an authorised internal recipient.



7. PID Act protections

The PID Act provides a range of protections for public officials in relation to PIDs.

The protections include:

- protection of a discloser's identity, subject to certain exceptions such as to enable the allocation or investigation of a disclosure under the PID Act or another law, or if a discloser acts in a way inconsistent with their identity being kept confidential;
- immunity from civil, criminal or administrative liability for disclosers and witnesses; and
- support and protection from reprisal for disclosers, witnesses and potential disclosers.

However, the protections do not apply in relation to a disclosure or other information provided that is intentionally false or misleading, and they do not protect a public official from liability for their own wrongdoing.

It is a criminal offence for a person to take, or threaten to take, reprisal action against another person because of a belief or suspicion that the other person has made, may have made, proposes to make, or could make a PID.

An initial reprisal risk assessment will be conducted by the Authorised Officer for each PID to assess the risk that reprisals will be taken against the discloser. If a discloser believes that detrimental action has been or is being taken against them in response to making a PID, they should tell their supervisor, an Authorised Officer or the Investigating Officer immediately.

Apart from these protections, the ABC will take steps necessary to protect and support any public official making a PID.

Any public official who requires additional support may also access the [ABC's Employee Assistance Program](#).

8. Is there another way to report matters?

Apart from the PID process, the ABC has a range of other avenues for reporting suspected wrongdoing. Alternative reporting options are set out below:

- **workplace behaviours** – the [ABC Grievance Resolution Guidelines](#) explain how to make a complaint about workplace grievances
- **suspected fraud or corruption** – the [Fraud & Corruption page](#) on the intranet explains how to report a suspected fraud or corruption matter

If you are external to the ABC and do not have access to the intranet, you can email Whistleblower.Hotline@abc.net.au for more information about the alternative reporting options.

Personal work-related conduct is generally not reportable under the PID Act with some exceptions (see section 5 above). Matters involving grievances about other employees,



including employee behaviour, can be reported in accordance with the ABC Grievance Resolution Guidelines, which include detailed information about informal and formal resolution processes. These processes for investigation of employee grievances are consistent with the ABC Enterprise Agreement. Importantly, the ABC Enterprise Agreement specifically provides for disciplinary action that may be taken against an employee if an allegation of misconduct is substantiated.

In accordance with its obligations under the *Public Governance Performance and Accountability Act 2013* (Cth) the ABC has responsibilities to have appropriate mechanisms for reporting and investigating suspected fraud and corruption. The ABC prefers that matters involving fraud or corruption are reported to Confidential.FraudHotline@abc.net.au or 1800 895 213. You may also report suspected fraud or corruption to the Head of Group Audit, your manager, department head or divisional director. For more information about reporting suspected fraud or corruption at the ABC see the [Fraud & Corruption page](#) on the intranet.

In considering how you report a grievance or disclosure be aware that if a matter is reported as a PID and is allocated for investigation, the person responsible for the investigation may decide not to investigate the matter, or not to investigate it further, if the information does not, to any extent, concern serious disclosable conduct.

9. What responsibilities do ABC public officials have under the PID Act?

The Managing Director

The Managing Director of the ABC has specific responsibilities under the PID Act that include establishing procedures to facilitate and deal with PIDs, investigating PIDs, reporting on matters that have been investigated and ensuring that appropriate action is taken in response to any recommendations in a report or from the Commonwealth Ombudsman in relation to a report.

Public Officials

Apart from their obligation to use their “best endeavours” to assist the Managing Director or delegate in the conduct of any PID investigation, to assist the Ombudsman in the discharge of the Ombudsman’s functions under the PID Act, and to assist another public official to exercise a right or perform a function or duty under the PID Act, public officials of the ABC should:

1. report matters where there is evidence that shows or tends to show disclosable conduct;
2. maintain confidentiality if they become aware of a PID. This means not disclosing the identity of a discloser, a person who is the subject of a PID, or a witness;
3. support any staff known to have made a PID; and
4. report to an appropriate person any threats or reprisal action in relation to a PID.



Supervisors

A public official may make a PID to their supervisor or manager.

If you are a supervisor or manager and you receive information that you believe concerns, or could concern, disclosable conduct, you must inform the discloser about the PID process as described in these Procedures and give that information to an Authorised Officer of the ABC as soon as practicable.

Managers and supervisors should familiarise themselves with these Procedures and be approachable to staff who may wish to raise concerns.

Managers and supervisors should also be prepared to support staff members who they know have made or believe could make a disclosure and to take actions available to protect relevant people from risks of reprisal.

Additional information for supervisors is available on the [Commonwealth Ombudsman website](#).

Authorised Officers

Authorised Officers are appointed by the Managing Director and have a range of responsibilities under the PID Act, including:

- receiving disclosures;
- explaining the requirements of the PID Act to disclosers, including when a PID must be referred to the NACC;
- making a written record of the fact of the disclosure and, if the disclosure is not in writing, making a written record of the substance of the disclosure and of the time and date of the disclosure;
- assessing disclosures to determine whether the information provided could be considered a PID;
- assessing the risk of reprisal in relation to the disclosure;
- making preliminary inquiries necessary to make an allocation decision;
- referring a disclosure to the NACC if the criteria are met for mandatory referral and notifying the discloser and Managing Director about the referral;
- allocating the PID to an investigating officer, or referring the PID for investigation under another law or power where appropriate, and informing the discloser of the allocation decision;
- notifying the Ombudsman and Managing Director of allocation decisions and associated information;
- notifying the Ombudsman when a stop action direction from the NACC prevents allocation of all or part of a disclosure; and
- advising the discloser of any decision not to allocate the disclosure, the reasons why and any other course of action that may be available under another law or power.



Investigating Officers

Investigating Officers have been delegated the power to investigate PID matters by the Managing Director. They are responsible for investigating a PID that has been allocated to them by an Authorised Officer. At the ABC, the Investigating Officer has ongoing responsibility throughout the investigation for assessing the risk of reprisal against the discloser and any witnesses providing assistance in relation to a PID.

10. Making a public interest disclosure (PID)

Who to contact about a PID

A public official considering making a PID should review these procedures carefully and then contact an Authorised Officer to obtain information about making a PID. An overview of the PID process is set out at **Appendix A**.

It is possible to make a PID to a supervisor. However, the ABC encourages disclosures to be made to an Authorised Officer as they have a higher level of training in how to receive PIDs and protect disclosers.

How to contact an Authorised Officer of the ABC

ABC Authorised Officers can be contacted in the following ways:

Email: Whistleblower.Hotline@abc.net.au

Phone: 1800 895 213

Mail: Marked CONFIDENTIAL and sent to:
The Authorised Officer
Public Interest Disclosures
c/of ABC Group Audit
700 Harris Street
Ultimo NSW 2007

A list of the ABC's Authorised Officers is published on the intranet.

If you believe that it is not appropriate to report the matter to any of these people, you may report the matter directly to the Managing Director.

A disclosure may also be made to an Authorised Officer of the Commonwealth Ombudsman if the discloser believes on reasonable grounds that it would be appropriate for the Ombudsman to investigate. Disclosures concerning corruption can also be made to the NACC.

What information should be provided when making a PID

The ABC prefers that a disclosure is made in writing and is stated to be a PID. However, a PID may also be made orally, and it is generally** not necessary for the discloser to assert that the disclosure is made for the purpose of the PID Act for the disclosure to be covered by the PID Act.



**** Note:** In areas where public officials' everyday functions include investigating suspected wrongdoing, a routine discussion about suspected wrongdoing in the course of performing a person's ordinary functions as a public official does not constitute a PID and does not require referral to an Authorised Officer. This exclusion does not prevent such a public official from making a PID, however they would need to make their intention clear when communicating the disclosure to their supervisor or to an Authorised Officer.

The content of a PID should be factual and avoid speculation or personal attacks. It will assist the Authorised Officer to evaluate the disclosure if the following information is included:

1. the name and contact details of the discloser;
2. the nature of the conduct that is being reported;
3. the name of the person who is alleged to have engaged in the conduct;
4. the date and location of the alleged conduct;
5. any relevant events surrounding the alleged conduct;
6. the name of any other persons who may have knowledge of the alleged conduct, or have allowed it to continue;
7. whether the person disclosing holds a belief that the information is a PID (although it does not need to be described in this way in order to be a PID);
8. a statement as to whether the person reporting the matter is or was a public official, for example, "I currently work at the ABC";
9. any supporting documents or materials that support the disclosure; and
10. any concerns about possible reprisal as a result of making a disclosure.

Can a discloser remain anonymous?

A disclosure may be made anonymously. This means that the discloser does not identify themselves to anyone at any stage, including the Authorised Officer who receives the disclosure.

Potential disclosers should bear in mind that remaining anonymous may make investigating the disclosure more difficult, particularly if the anonymity means that the ABC cannot contact the discloser to seek further information.

If a disclosure is made on an anonymous basis the ABC will endeavour to determine whether the discloser is a current or former public official entitled to make a PID.

Alternatively, a discloser may identify themselves to their supervisor or an Authorised Officer but ask to be referred to by a pseudonym to hide their identity from others.

A person who has made an anonymous disclosure may reveal their identity at a later stage and confirm that they have the protections of the PID Act.

Benefits of identifying yourself when you make a disclosure

Some of the benefits of making your identity known when making a disclosure include:



1. it is easier to take steps to ensure protection from reprisal for an individual whose identity is known to the ABC;
2. the Authorised Officer receiving the disclosure needs to be satisfied that there are reasonable grounds to suspect the disclosable conduct has occurred in order to allocate the matter for investigation. If they are unable to seek further information, they may not proceed to allocate the matter; and
3. it is not possible to keep an anonymous discloser apprised of the progress of the investigation, including its outcome.

11. Initial assessment of the disclosure

Once a disclosure is received by an Authorised Officer, the Authorised Officer will assess the information and determine whether there is a reasonable basis on which the disclosure could be considered a PID under the PID Act (see section 3 above), and if it would be more appropriately investigated under another law or power. Authorised Officers may obtain further information and make such inquiries as they think fit for the purposes of deciding the allocation of the disclosure. Authorised Officers must use their best endeavours to decide on the allocation of a disclosure within 14 days after the disclosure is made to the Authorised Officer.

If the Authorised Officer decides that the conduct would be more appropriately investigated under another law or power, the Authorised Officer must as soon as reasonably practicable take reasonable steps to refer or facilitate referral of the conduct under that other law or power. Other avenues for investigating conduct at the ABC include:

- ABC fraud and corruption framework;
- procedures for dealing with suspected breaches of the ABC's Code of Conduct under the ABC Enterprise Agreement 2022-2026 (as amended from time to time);
- ABC Grievance Resolution Guidelines;
- ABC Work Health and Safety Framework;
- any other of the ABC's policies or procedures.

The Authorised Officer will also assess whether the disclosure requires referral to the NACC (see section 17 below).

12. Allocating a PID

If the Authorised Officer is satisfied that the disclosure meets the requirements of a PID (see section 3 above) and the disclosure would not be more appropriately investigated under another law or power, the Authorised Officer will allocate the PID to one or more agencies for further handling and investigation, subject to any stop action direction from the NACC.

When allocating an internal disclosure related to the ABC, the Authorised Officer will:

1. inform the Principal Officer (Managing Director or delegate) and the Ombudsman¹ of:
 - a. the allocation to the ABC;
 - b. the information that was disclosed;
 - c. the conduct disclosed; and
 - d. if the discloser's name and contact details are known to the Authorised Officer, and the discloser consents to the Principal Officer and/or Ombudsman being informed—the discloser's name and contact details; and
2. if reasonably practicable, give the discloser a copy of the notice to the Ombudsman, and information about the powers of the Principal Officer (or delegate) to decide not to investigate or not to further investigate a disclosure under the PID Act.

If the Authorised Officer decides that a disclosure does not meet the requirements of a PID or would be more appropriately investigated under another law or power, the Authorised Officer will:

1. provided the discloser's contact details are known, advise the discloser of:
 - a. the decision not to allocate the disclosure and the reasons for the decision; and
 - b. if the disclosure is being referred for investigation under another law or power – information about:
 - i. the other law or power;
 - ii. the agency or other person or body to which the conduct has been (or is to be) referred; and
 - iii. the steps taken (or proposed to be taken) to refer or facilitate the referral of the conduct; or
 - c. if the disclosure isn't being referred under b. – any other courses of action that might be available to the discloser under other laws of the Commonwealth; and
2. inform the Ombudsman of the following information by completing the Ombudsman notification of decision not to allocate form:
 - a. the decision not to allocate the disclosure and the reasons for the decision; and
 - b. whether the disclosure is being referred for investigation under another law or power and, if so, the details of:
 - i. the other law or power;
 - ii. the agency or other person or body to which the conduct has been (or is to be) referred; and

¹ Use the Ombudsman notification of allocation form.



- iii. the steps taken (or proposed to be taken) to refer or facilitate the referral of the conduct.

The Authorised Officer will keep a written record of the allocation decision and the reasons for the decision.

13. Deciding whether or not to investigate a PID

The Managing Director has delegated the power to investigate PIDs to a range of suitably skilled people within the ABC. In this section of the Procedures those delegates are referred to as Investigating Officers.

If a PID is allocated to the ABC, the Investigating Officer will, as soon as reasonably practicable after being allocated the PID and subject to any stop action direction from the NACC, decide whether or not to investigate the PID and inform the discloser (if the discloser's contact details are known) of:

- If the decision is to investigate:
 - the decision to investigate; and
 - the estimated length of the investigation.
- If the decision is not to investigate (or not to investigate further):
 - the reasons for the decision not to investigate; and
 - if the disclosure is being referred for investigation under another law or power – information about:
 - the other law or power;
 - the agency or other person or body to which the conduct has been (or is to be) referred; and
 - the steps taken (or proposed to be taken) to refer or facilitate the referral of the conduct ; or
 - if the disclosure is not being referred – other courses of action that may be available to the discloser under other laws of the Commonwealth.

When will the ABC not investigate a disclosure?

Circumstances under which an Investigating Officer may decide not to investigate (or may decide to discontinue an investigation already begun) include:

- the discloser is not a current or former public official; or
- the information does not to any extent concern serious disclosable conduct; or
- the disclosure is frivolous or vexatious; or
- the disclosure is substantially the same as a disclosure that has been or is being investigated under the PID Act; or

- the disclosure is substantially the same as a disclosure that is currently being investigated, or has already been investigated, under another law of the Commonwealth; and
 - it would be inappropriate to conduct another investigation at the same time; or
 - the Investigating Officer is reasonably satisfied that there are no matters that warrant further investigation; or
- the Investigating Officer is reasonably satisfied that the conduct disclosed would be more appropriately investigated under another law or power;² or
- the discloser has informed the Investigating Officer that they do not wish the disclosure to be pursued and the Investigating Officer 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; or
 - the discloser has refused or has failed or is unable to give the Investigating Officer the information they requested; or
 - of the age of the information.

If the Investigating Officer decides not to investigate a disclosure, or not to investigate a disclosure further, the Investigating Officer will inform the Ombudsman of the decision and the reasons for the decision.

If the Investigating Officer decides to refer the disclosure for investigation under another law or power, the Investigating Officer will also inform the Ombudsman about:

- the other law or power;
- the agency or other person or body to which the conduct has been (or is to be) referred; and
- the steps taken (or proposed to be taken) to refer or facilitate the referral of the conduct.

14. Investigating a PID under the PID Act

If the Investigating Officer has decided to commence an investigation into a PID, they may conduct the investigation as they think fit.

² An Investigating Officer cannot be satisfied that the conduct disclosed would be more appropriately investigated under another law or power only because the conduct disclosed raises a corruption issue. Subject to any stop action direction from the NACC, disclosures that raise a corruption issue can continue to be handled under the PID Act despite being referred to the NACC (see section 17 below).



The Investigating Officer may obtain information from such persons, and make such inquiries, as they think fit, however, the Investigating Officer must comply with the PID Act, these Procedures and the Public Interest Disclosure Standard 2013 (**Standard**).

In conducting an investigation, the Investigating Officer:

- may adopt findings set out in reports of investigations or inquiries under another law or power, or reports of other investigations under the PID Act; and
- will consider whether information obtained during the investigation raises a corruption issue requiring referral to the NACC (see section 17 below).

Interviewing witnesses

It may be appropriate for the Investigating Officer to conduct interviews of witnesses. If so, subject to any restrictions imposed by any law of the Commonwealth other than the PID Act, the Investigating Officer will ensure that the person being interviewed is informed of:

- the identity and function of each individual conducting the interview;
- the process of conducting an investigation;
- the authority of the Investigating Officer under the PID Act to conduct an investigation; and
- the protections provided by the PID Act. Those protections are set out in section 12A.

When conducting an interview, the Investigating Officer will also ensure that:

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

Procedural fairness

The ABC will inform a person about whom allegations have been made of the substance of the allegations against them if an adverse opinion, or finding of fact, is going to be expressed or made about their conduct.

A person does not need to be told about an allegation against them that is of no substance.

If an Investigating Officer proposes to:

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

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



If allegations and evidence is put to the person the subject of the allegations, it is possible that he or she may be able to determine the discloser's identity even if the ABC does not disclose it. If this was likely, the ABC would normally discuss this in advance with the discloser.

Confidentiality

The investigation of a PID should be conducted in as confidential a manner as possible.

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 PID (including because of the need to afford procedural fairness).

Section 20 of the PID Act makes it an offence to use or disclose identifying information about the discloser except in certain limited circumstances.

Anyone interviewed during the investigation should be advised that information about the matter is confidential, that release of information may jeopardise an investigation, and that they may be committing an offence if they divulge any information that is likely to identify the discloser.

Assistance with an investigation

All public officials have a responsibility to use their "best endeavours" to assist in the conduct of an investigation.

15. Length of the PID process

The Investigating Officer has 90 days from the date the PID was allocated in which to complete the investigation.

It is possible to extend the timeframe for completing an investigation by seeking an extension, or further extension, from the Ombudsman.

If the NACC has issued the ABC a stop action direction that prevents a PID being investigated, the 90-day timeframe for completing the investigation resets once the stop action direction is withdrawn. This is regardless of any period of investigation that occurred before the stop action direction was made.

16. Report of the investigation

Upon completion of an investigation, the Investigating Officer is required to prepare a written report of the investigation in accordance with the requirements of the PID Act and the Standard. The report must set out:

- the matters considered in the course of the investigation, including the disclosable conduct alleged by the discloser and any other possible disclosable conduct subsequently identified;

- the duration of the investigation;
- the Investigating Officer's findings (if any);
- the action (if any) that has been, is being, or is recommended to be, taken; and
- any claims made about, and any evidence of, detrimental action taken against the discloser or any other person, and the ABC's response to those claims and that evidence;

and, where relevant, the report must:

- 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.

The Investigating Officer must give the Ombudsman notice³ of the completion of an investigation, together with a copy of the report, within a reasonable time after preparing the report.

If it is reasonably practicable and the discloser's details are known to the Investigating Officer, the Investigating Officer will give a copy of the report to the discloser within a reasonable time after preparing the report. The Investigating Officer is permitted to redact the report in accordance with the PID Act.

The Managing Director (or delegate) must ensure that appropriate action is taken in response to any recommendations in a report that relate to the ABC.

17. Interaction with the National Anti-Corruption Commission

The *National Anti-Corruption Commission Act 2022* (NACC Act) imposes new obligations on PID officers (both Authorised Officers and Investigating Officers) in relation to disclosures made on or after 1 July 2023.

Mandatory referral to the NACC

From 1 July 2023, when considering a disclosure for allocation or investigation, the PID officer must also consider whether the disclosure meets the criteria for mandatory referral to the NACC.

This requires the PID officer to consider whether:

- the internal disclosure raises a corruption issue under the NACC Act;

³ Use the Ombudsman notification of a finalised PID investigation form.

- the corruption issue concerns the conduct of a person who is (or was) a staff member of the ABC while that person is (or was) a staff member of the ABC; and
- the PID officer suspects the issue could involve serious or systemic corrupt conduct.

If all the above criteria are met, the PID officer must notify the Managing Director and refer the corruption issue to the NACC as soon as reasonably practicable after becoming aware of it, unless:

- they believe on reasonable grounds that the NACC is already aware of the corruption issue (for example, if a PID officer investigating a PID is aware that the issue has already been referred to the NACC at the allocation stage); or
- a NACC determination provides that referral is not required because of the kind of corruption issue involved or the circumstances in which it arises.

What information needs to be provided to the NACC?

When a PID officer refers a matter to the NACC, they must explain why they suspect the corruption issue could involve conduct that is serious or systemic. They must also provide the NACC with all of the information or documents in their possession or control that relate to the issue, subject to limited exceptions (see Exceptions to information requirements below).

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 individuals 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; and
- 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 reasonably practicable.

Exceptions to information requirements

A PID officer is not required to provide information about a corruption issue if any of the following apply:

- the PID officer believes on reasonable grounds that the Commissioner is already aware of the information;
- the NACC Commissioner has advised the information is not required;
- the information is subject to a journalism exception (see below);
- the information is subject to an exempt secrecy provision; or

- the Attorney-General has certified that disclosing the information would be contrary to the public interest because it would harm Australia's international relations.

It is important to note that the mandatory referral obligation continues to apply in these circumstances. However, the PID officer is not required to include the information subject to the exceptions above in their referral.

Journalism exceptions

The NACC Act includes specific measures to protect the identities of journalists' confidential informants. These protections apply in respect of the ABC and are intended to uphold the public interest associated with a free press. The protections mean that a PID officer is not required (and cannot be compelled) to provide information to the NACC that would disclose the identity of a journalist's confidential informant or enable that identity to be ascertained.

A PID officer is also not required to provide information that is subject to legal professional privilege and would disclose legal advice given, or a communication made, for the purpose of, or in the course of, a person's work as a journalist.

Informing the discloser

If the PID officer refers a corruption issue to the NACC, they must notify the person who made the internal disclosure as soon as practicable. This requirement applies irrespective of whether the referral is made at the allocation or investigation stage.

What happens to the PID matter after referring the corruption issue?

Referring a corruption issue to the NACC does not prevent the ABC from taking action. This means the ABC must still continue to deal with the PID in accordance with the PID Act, unless the NACC directs the ABC to stop.

The NACC is able to direct the ABC to stop taking action in relation to a corruption issue. This is called a stop action direction. A stop action direction can prevent the ABC from taking particular action in relation to the issue, or from taking any action at all.

The PID officer must notify the Ombudsman in writing if a stop action direction prevents a disclosure from being allocated or investigated.

The PID officer should also consider whether it is reasonably practicable and appropriate to notify the discloser that they cannot allocate or investigate the disclosure because of a stop action direction under the NACC Act.

The NACC must withdraw a stop action direction as soon as it is no longer required. Once withdrawn, the relevant time period for allocating or investigating an affected PID resets.

18. Need more information?

Further information about the PID Act and how it works can be found at the links set out below:

PID Act – <https://www.legislation.gov.au/Series/C2013A00133>

PID Standard – <https://www.legislation.gov.au/Series/F2013L02146>

Agency Guide to the Public Interest Disclosure Act 2013 –
<https://www.ombudsman.gov.au/industry-and-agency-oversight/public-interest-disclosure-whistleblowing/tools-and-resources>

