

# Public Interest Disclosure (PID) Procedures

December 2016

**If you wish to make a PID you can:**


Write to: ACT Audit Office  
PO Box 275  
CIVIC SQUARE ACT 2608

Email: [actauditorgeneral@act.gov.au](mailto:actauditorgeneral@act.gov.au)

Phone: (02) 6207 0833

Fax: (02) 6207 0826

### Approved

	December 2016
_____ Dr Maxine Cooper, Auditor-General	_____ Date

### Approved

Approval provided in a letter dated 7 November 2016	
_____	_____
Public Sector Standards Commissioner	

### Document History

Action	Date
Procedures approved and released	November 2013
Reviewed and released	December 2016
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(These procedures may be modified prior to 2019 if it is found necessary or due to amendments to the *Public Interest Disclosure Act 2012* or the Public Sector Standards Commissioner's *Public Interest Disclosure Guidelines 2014*)

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# 1 HOW TO MAKE A PUBLIC INTEREST DISCLOSURE (PID)

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## 1.1 INTRODUCTION

- 1.1 The *Public Interest Disclosure Act 2012* (the PID Act) enables anyone to report serious or systemic wrongdoing (referred to as 'disclosable conduct') in an ACT public sector entity or an ACT Legislative Assembly entity. Such a report is termed a public interest disclosure (PID).
- 1.2 The ACT Auditor-General encourages the reporting of suspected wrongdoing and will work to ensure that anyone who raises genuine concerns is protected from reprisal.
- 1.3 This Public Interest Disclosure Procedure (the procedure) aims to provide information to facilitate matters being considered in accordance with the PID Act.
- 1.4 The ACT Audit Office (the Audit Office) has used the Public Sector Standards Commissioner's (formally the Commissioner for Public Administration) [Public Interest Disclosure Guidelines 2014](#) (the guidelines) as amended from time to time, to guide these procedures for managing a PID made to the Audit Office. The procedure should be read in conjunction with the guidelines and the PID Act.
- 1.5 These procedures have been approved by the Auditor-General and the Public Sector Standards Commissioner under section 33 of the PID Act.

## 1.2 WHAT IS A PID?

- 1.6 A PID is the reporting of disclosable conduct which relates to an activity by an ACT Government instrumentality, officer, employee, contractor or anyone else who exercises a function on behalf of the ACT Government, including Ministers, Members of the ACT Legislative Assembly and Officers of the ACT Legislative Assembly (ACT Auditor-General, Electoral Commissioners and ACT Ombudsman). Disclosable conduct is that which:
  - is illegal;
  - is a substantial misuse or waste of public money or resources;
  - is misconduct;
  - is maladministration that adversely affects a person's interest in a substantial or specific way;
  - presents a substantial and specific danger to the health or safety of the public; or
  - presents a substantial and specific danger to the environment.
- 1.7 A PID may relate to events which are happening now, in the past, or that may happen in the future.

- 1.8 While a discloser is not required to satisfy a legal level of proof, the discloser should have good reasons or evidence for their suspicions to make a PID.
- 1.9 Table 1 outlines considerations you should make before making a PID.

**Table 1: Considerations before making a PID**

<ol style="list-style-type: none"> <li>1. Consider what have you witnessed or otherwise come to know. Is it:             <ol style="list-style-type: none"> <li>a. <u>unlawful</u> (has someone broken a law or are they engaging in illegal activity?)</li> <li>b. <u>corrupt conduct</u> (for example, bribery, graft, extortion, political manipulation, kickbacks, misappropriation or theft, fraud, self-dealing, patronage, abuse of discretion, creating/exploiting a conflict of interest, nepotism, or favouritism etc.)</li> <li>c. <u>misconduct</u> (see Section 9 PSM Act and the <i>ACTPS Code of Conduct</i>)</li> <li>d. <u>maladministration</u> (including public wastage, organisational negligence or inaction)</li> <li>e. a <u>danger to the health or safety of the community or environment</u> (has someone done something that will adversely affect people’s health or damage the environment leaving it in a worse state than it was previously?)</li> </ol> </li> <li>2. Think about what you are reporting. Is the information rumour or fact? Can you provide evidence to support your assertions?</li> <li>3. Is your belief reasonable?</li> <li>4. Does the activity damage the public interest? (is someone benefiting personally by taking something from the public purse, or will the public at large suffer due to the actions of the individual or entity?)</li> <li>5. Does the issue have wide ramifications or longer term implications?</li> <li>6. Have you thought about how others might react to your PID? It is a good idea to establish a support network (e.g. employee assistance provider or seek the assistance of others trained in helping people to deal with stressful situations) so that if things become complex, you are in a good position to take care of your interests.</li> <li>7. If after considering the above you decide you hold information that will serve to protect the public interest and uphold the integrity of the public sector:             <ol style="list-style-type: none"> <li>a. do you know how to make the disclosure? Are you willing to put it in writing? A disclosure should be made to your supervisor, a disclosure officer, the head of an entity or the Commissioner for Public Administration (Commissioner). Only in very specific circumstances can a disclosure be made to a journalist or a Member of the ACT Legislative Assembly.</li> <li>b. Do you know the kinds of information you should provide when making a disclosure? You should have good reasons and possibly evidence for your suspicions.</li> <li>c. Is the outcome you expect reasonable? You should communicate your expectations when making your disclosure. Do you know what happens next? If unsure you should ask when making your disclosure.</li> </ol> </li> </ol>
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Source: Public Sector Standards Commissioner’s (formally Commissioner for Public Administration) *Public Interest Disclosure Guidelines 2014*, page 12

### 1.3 WHAT IS THE DIFFERENCE BETWEEN A PID, A COMPLAINT OR OTHER MATTER?

1.10 Table 2 provides guidance on the difference between a PID, complaint and another matter.

**Table 2: Differentiating between a PID, complaint or other matter**

If the matter involves:	Then it could be:
<p><u>Unlawful activity</u> – has someone broken a law or engaged in illegal activity?</p> <p><u>Corruption</u> – has someone been involved in corrupt behaviour such as bribery, graft, extortion, political manipulation, kickbacks, misappropriation or theft, fraud, abuse of discretion, creating or exploiting a conflict of interest, nepotism or favouritism?</p> <p><u>Misconduct</u> – has someone breached section 9 of the <i>Public Sector Management Act 1994</i> in a way that has significant consequences for their organisation or a third party, or a widespread impact?</p> <p><u>Maladministration</u> – does the issue relate to a substantial waste or misuse of public funds or resources, organisational negligence, or failure to act?</p> <p><u>A danger to the health or safety of the community or environment</u> – is someone doing something that will substantially adversely affect people’s health or damage the environment?</p>	<p><b>Public Interest Disclosure</b></p> <p><b>(a matter for determination by a Disclosure Officer)</b></p>
<p><u>Industrial matters</u> – is it an issue relating to overtime, workload or working conditions?</p> <p>Individual allegations of <u>bullying, harassment or discrimination</u>.</p> <p><u>Conduct</u> of an individual where the consequences do not have a widespread impact.</p>	<p><b>Complaint, grievance</b></p> <p><b>(You should talk to your supervisor, workplace representative or Human Resource area or Commissioner)</b></p>
<p>Issues relating to <u>underperformance</u>.</p> <p>Issues relating to <u>incompetence or negligence</u> of an individual where the consequences do not have a widespread impact.</p> <p>Issues relating to the way performance are <u>managed</u>.</p>	<p><b>Performance management</b></p> <p><b>(You should talk to your supervisor)</b></p>

Source: Chief Minister, Treasury and Economic Development Directorate’s *Public Interest Disclosure Procedures August 2015*, page 13

### 1.4 COMPLAINT HANDLING MECHANISMS

1.11 If your matter is not a disclosure you may be able to seek help through a complaints process. Table 3 provides guidance on complaint handling mechanisms.

**Table 3: Complaint handling mechanisms**

Area	Further information is available from:
<p><b>ACT Civil and Administrative Appeals Tribunal</b></p> <p>For reviews of reviewable decisions made under certain legislation</p>	<p>Ph: (02) 6207 1740</p> <p><a href="#">ACT Civil and Administrative Appeals Tribunal</a></p>
<p><b>ACT Human Rights Commission</b></p> <p>For complaints relating to children and young people, disability and community services, health services and human rights and discrimination</p>	<p>Ph: (02) 6205 2222</p> <p><a href="#">ACT Human Rights Commission</a></p>
<p><b>ACT Ombudsman</b></p> <p>For complaints about an ACT public entity administrative actions and decisions</p>	<p>Ph: 1300 362 072</p> <p><a href="#">ACT Ombudsman</a></p>
<p><b>Public Sector Standards Commissioner</b></p> <p>For a wide range of issues, especially matters related to the <i>Public Sector Management Act 1994</i> (e.g. ACT entity responsibilities for public servants, administrative actions and decisions)</p>	<p>Ph: (02) 6205 0358</p> <p><a href="mailto:ACTPublicSectorStandardsCommissioner@act.gov.au">ACTPublicSectorStandardsCommissioner@act.gov.au</a></p>
<p><b>Fair Work Commission</b></p> <p>In respect of dispute resolution of provisions in the Enterprise Agreement and Unfair Dismissal</p>	<p>Ph: 1300 799 675</p> <p><a href="#">Fair Work Commission</a></p>
<p><b>Fair Work Ombudsman</b></p> <p>For complaints about contraventions of workplace laws, including enterprise agreements</p>	<p>Ph: 13 13 94</p> <p><a href="#">Fair Work Ombudsman</a></p>
<p><b>Human Rights and Equal Opportunity Commission</b></p> <p>For complains of discrimination and breaches of human rights</p>	<p>Ph: 1300 656 419</p> <p><a href="#">Human Rights and Equal Opportunity Commission</a></p>
<p><b>Office of the Australian Information Commissioner</b></p> <p>For complaints about braches of privacy</p>	<p>Ph: 1300 363 992</p> <p><a href="#">Office of the Australian Information Commissioner</a></p>

Source: Chief Minister, Treasury and Economic Development *Directorate's Public Interest Disclosure Procedures August 2015*, page 13, amended to include the Public Sector Standards Commissioner (formally the Commissioner for Public Administration)

## 1.5 WHO CAN MAKE A PID?

- 1.12 Anyone suspecting a misuse of public resources or with information that indicates questionable activity relating to the work of an ACT public sector entity is encouraged to make a disclosure. This includes ACTPS employees, contractors and others who work with ACT public sector entities, Members of the ACT Legislative Assembly, and members of the public.
- 1.13 A person may make a PID even if they are not able to identify a particular person who is responsible for the activity.

1.14 The Audit Office will accept an anonymous PID. However, where an anonymous PID is made, it is generally more difficult to look into the matter. It is also not possible to protect the discloser or keep them informed of progress.

## **1.6 PROTECTION FOR A DISCLOSER**

1.15 Under the PID Act, a person who acts honestly and reasonably in making a PID (the discloser) receives protection from attacks or reprisal that result from the disclosure (reprisal is called detrimental action in the PID Act).

1.16 If a person retaliates against the discloser by directly or indirectly punishing them for reporting information, they will be held accountable for their behaviour. Under the PID Act, the person who takes detrimental action has committed an offence. This person may also be pursued for damages in court.

1.17 Examples of detrimental action include:

- intimidating or harassing the discloser;
- damaging or taking the discloser's property;
- disadvantaging the discloser in relation to their career, employment, trade or business;
- threats of any of the above; or
- deliberately causing financial loss to the discloser.

1.18 If a PID is made in good faith but turns out to be untrue, the discloser is still entitled to protection under the PID Act.

1.19 A vexatious PID may be investigated, however where a person makes a PID that is vexatious or done with unethical intentions, they will lose the protections provided in the PID Act.

1.20 Protection is not provided to people who knowingly make false claims.

## **1.7 WHO HAS RESPONSIBILITY FOR A PID RECEIVED BY THE AUDIT OFFICE?**

1.21 The Audit Office has two Disclosure Officers who have special responsibility for dealing with a PID. These people are:

- Dr Maxine Cooper, Auditor-General; and
- Mr Brett Stanton, Director, Performance Audit (also the Audit Office Senior Executive Responsible for Business Integrity Risk).



## 1.8 HOW TO MAKE A PID

1.22 PID matters can be presented to the Audit Office via:

- email (via the Audit Office central email): [actauditorgeneral@act.gov.au](mailto:actauditorgeneral@act.gov.au);
- phone (via the Audit Office Reception): (02) 6207 0833;
- mail (via the general mail address): GPO Box 275, Civic Square ACT 2608; or
- contacting an Audit Office staff member including one of the Disclosure Officers.

1.23 A PID may also be made to one of the following officers in the following circumstances:

- For matters that relate to the ACTPS, a PID can be made to the Director-General, Chief Minister, Treasury and Economic Development Directorate or the Head of Service.
- For employees of the ACTPS, a PID can be made to your supervisor or manager.
- For a PID relating to the Head of Service, the ACT Ombudsman should be contacted.
- For matters that relate to the ACT Legislative Assembly, a PID can be made to the Clerk of the ACT Legislative Assembly.
- If there is a governing board, a PID can be made to a board member.
- PIDs can also be made to the Public Sector Standards Commissioner and the ACT Ombudsman.

## 1.9 AN INADVERTENT PID

1.24 While the above contact methods are presented to guide someone wishing to make a PID, a PID does not have to be a formal complaint or report. It could be made by simply providing information about a system or systemic wrongdoing without referring to the PID Act or even calling something a PID.

1.25 It could also be made unintentionally, possibly during a casual conversation. For example, while speaking with an Audit Officer during their activities in undertaking an audit or through informal conversation in the work place e.g. chatting in the kitchen, a colleague might mention that an invoice was received for furniture that was never delivered. Should this occur, you have an obligation to inform a Disclosure Officer, even if your colleague requests you not tell anyone.

1.26 Staff not directly involved in a discussion or actions, may nonetheless witness wrongdoing, and are strongly encouraged to report these matters to a Disclosure Officer.

## **1.10 PIDS THAT CAN BE CONSIDERED BY AN AUDIT OFFICE DISCLOSURE OFFICER**

1.27 The Audit Office's position under the PID Act is different from most other ACT public sector agencies which only receive PIDs about the actions of that agency or any of its staff, contractors and volunteers. An Audit Office Disclosure Officer may receive a PID about any person or entity whose conduct is covered by the PID Act. This includes:

- the Audit Office and any of its current or former staff, contractors carrying out Audit Office functions;
- another ACT public sector entity and any of its current or former staff, contractors or volunteers carrying out its functions; and
- an ACT Legislative Assembly entity which means Members of the ACT Legislative Assembly and their staff, staff of the Office of the ACT Legislative Assembly, and Officers of the ACT Legislative Assembly (including the Electoral Commissioners and ACT Ombudsman). Staff includes current and former staff, and contractors and volunteers carrying out the entity's functions.

## **1.11 DO YOU HAVE TO REVEAL YOUR IDENTITY WHEN MAKING A PID?**

1.28 No, a discloser does not have to provide their identity.

1.29 While all correspondence with a discloser will be treated as confidential, as a discloser you decide if you are willing to reveal your identity. You may wish to:

- have it shared with the relevant ACT public service entity to which the matters of the PID relates; or
- only have it known by the Audit Office (this is considered in-confidence to the Audit Office); or
- not to reveal your identity at all (i.e. you wish to remain anonymous).

1.30 While it is at the discretion of a discloser as to whether or not they reveal their identity, the chance of a satisfactory outcome will be more likely where the identity is known and, if the matter concerns an ACT public sector entity other than the Audit Office, the identity of the discloser can be shared with the entity.

1.31 In weighing the veracity of any PID that is made such that the identity of the discloser's identity is confidential to the Audit Office or anonymous, the Disclosure Officer will have regard to the extent to which the PID made can be independently verified.

1.32 For an anonymous PID it will not be possible to keep the discloser protected or informed about the status of their PID. It may also not be possible to keep the discloser protected.

1.33 Where a PID is made in-confidence to the Audit Office only and the discloser's identity cannot be shared with the entity of concern, it may be difficult to assess or investigate the matter. It may also not be possible to keep the discloser protected.

- 1.34 The discloser's identity will not be revealed without that person's consent unless required by law, for example for a witness of an assault in a workplace.
- 1.35 A PID must be referred to the Chief Police Officer if the Disclosure Officer is satisfied on reasonable grounds that the disclosable conduct involves, or could involve, an offence.
- 1.36 The Public Sector Standards Commissioner will be advised of action taken by the Audit Office in relation to disclosable matters and correspondence. However in doing this the discloser request for confidentiality will be respected, if relevant.

## **1.12 WHEN CAN A PID BE MADE TO A JOURNALIST OR MEMBER OF THE ACT LEGISLATIVE ASSEMBLY?**

- 1.37 A discloser may make a PID to a journalist or a Member of the ACT Legislative Assembly, under the following circumstances:
- where the entity to which your PID is made refuses or otherwise fails to look into your PID;
  - where the entity agrees someone has acted inappropriately but the entity does not act to address the problem; or
  - when you have not been told about progress of your PID within the statutory timeframe.
- 1.38 Disclosures made in this way, under these specific circumstances, will be provided with protections under the Act. Were the Audit Office to fail in its duty to manage a PID according to the requirements of the PID Act, a person may be entitled to make their PID public. However, a discloser should be aware that should the disclosure fail to constitute a PID, they will not be provided with the protections available under the PID Act.
- 1.39 If a person considers that the conduct involves many people or is so deeply embedded in the culture of the Audit Office and for this reason making an internal PID may be detrimental to a discloser's health or wellbeing, they should inform the Public Sector Standards Commissioner or the ACT Ombudsman.

## **1.13 WHAT YOU CAN DO IF YOU THINK YOUR PID IS NOT HANDLED PROPERLY**

- 1.40 If you are dissatisfied with the outcome of an investigation, the Public Sector Standards Commissioner is able to review an investigation or any aspect of the handling of a PID. Additionally, the ACT Ombudsman may look into any matter dealt with under the PID Act. Contact details for these officers are in Table 3.

## 2 PID RESPONSIBILITIES WITHIN THE AUDIT OFFICE; RECEIVING AND HANDLING DISCLOSURES

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- 2.1 When information suggesting serious or systematic wrongdoing is received in the Audit Office, it must be referred to both Disclosure Officers (the Auditor-General and Director, Performance Audit) concurrently and as soon as possible. While this is done, it is the Auditor-General who takes primary carriage, unless this is required of the Director, Performance Audit by the Auditor-General.
- 2.2 The confidentiality of information concerning a PID is important and therefore information about the identity of the person who made a PID, or against whom a PID has been made will be treated as confidential. Appropriate management of the information in a PID is an important way of limiting the possibility of detrimental action.
- 2.3 All relevant documentation and files created in the Audit Office will be classified 'Sensitive – Auditor-General'. Hard copies of documents, including documents received from the discloser or any other person or entity, will be placed on the relevant file and stored in a locked filing cabinet. Access to electronic documents and files will be restricted to those with a 'need to know', that is, the Disclosure Officers (Auditor-General, the Director, Performance Audit) and those staff involved in the handling of the particular PID.

### 2.1 PID RESPONSIBILITIES WITHIN THE AUDIT OFFICE

- 2.4 The key PID roles in the Audit Office are:
- PID Disclosure Officers;
  - PID Coordinator;
  - PID File Manager;
  - PID Case Officer; and
  - Receiving Officer
- 2.5 For each alleged PID a Case Officer will be appointed by a Disclosure Officer to assist the Disclosure Officer.
- 2.6 Any Audit Office staff member may become a Receiving Officer, refer to section 2.1.5.

#### 2.1.1 PID Disclosure Officers

- 2.7 As mentioned in paragraph 1.21 Auditor-General and Director, Performance Audit are Disclosure Officers responsible for ensuring a PID is managed to fulfill the requirements of the PID Act.

### 2.1.2 PID Coordinator

2.8 The PID Coordinator is responsible for:

- updating the PID register (which has restricted access);
- being the contact officer for providing information for the register;
- monitoring PID progress;
- preparing regular updates for the Disclosure Officers; and
- preparing summaries of PID information for the annual report and estimates.

2.9 The PID Coordinator is not responsible for managing a PID unless they are nominated as a Case Officer.

### 2.1.3 PID File Manager

2.10 The PID File Manager is responsible for:

- managing PID files (hard copy and electronic); and
- assisting the Disclosure Officers, PID Coordinator and Case Officers, as required.

### 2.1.4 PID Case Officer

2.11 A PID Case Officer is responsible for assisting the Disclosure Officer in managing a PID case. Their role may vary depending on characteristics of the PID. In general they will be required to:

- liaise with the discloser and in doing so provide them with information to manage their expectations from the beginning of the process (e.g. their identity will not be disclosed by the Audit Office, but staff in a work area may guess their identity during an investigation or performance audit – a discloser needs to be aware of this up front (they may wish to withdraw their disclosure), and also that they may choose to identify themselves in the future). It may also be more difficult for the work area to ensure that no reprisal action takes place if they are not aware of the discloser's identity (i.e. they can reinforce general messages to staff but not put special measures in place). Furthermore, if an investigation is undertaken they may not be apprised of details or even told of specific actions that might subsequently be undertaken;
- liaise with an entity to whom a PID is forwarded, if applicable;
- seek expert advice, if needed;
- assist the Disclosure Officer by preparing correspondence;
- identify the potential risk to a discloser (refer to section 2.5) and advise the Disclosure Officer;
- undertake the initial assessment and through a brief (with a recommendation regarding whether matters presented constitute a PID (refer to section 1.3) advise the Disclosure Officer;

- prepare draft terms of reference for an investigation for consideration by the Disclosure Officer. If the Disclosure Officer after considering the initial assessment determines that the disclosed information constitutes a PID, the Officer should arrange or undertake an investigation in accordance with terms of reference approved by the Disclosure Officer;
- prepare a brief for the Disclosure Officer which outlines the investigation findings and provides recommendations;
- advise the PID Coordinator of progress for recording in the PID Register; and
- provide all correspondence and other relevant information to the PID File Manager.

### 2.1.5 Receiving Officer

2.12 An employee of the Audit Office could receive a PID simply by being an employee of the Audit Office. If this occurs the staff member automatically becomes a Receiving Officer and are obliged to report the PID to the two Audit Office Disclosure Officers.

2.13 If you receive information that could be considered a PID through:

- a phone call or face-to-face contact you should:
  - thank the discloser for coming forward;
  - let them know that you are not the Disclosure Officer, but that you will provide the information they provided to the Disclosure Officer as soon as possible;
  - ask them to outline the matters of concern and listen carefully to what is being said and take notes (or make notes as soon as possible after the contact) including details of the discloser and any individuals implicated in the matter;
  - remain neutral and do not comment on what is being provided by saying something that could be construed as agreeing or disagreeing;
  - establish how the person can be contacted;
  - inform the discloser that they will probably be asked to check, sign and date the record;
  - advise the two Disclosure Officers as soon as possible; and
  - not tell anyone other than the Disclosure Officers of the PID as this might put the discloser or any subsequent investigation at risk.
- your work or hearing a discussion, i.e. inadvertently you should:
  - make a written note including details of the discloser and any individuals implicated in the matter; and
  - advise the Disclosure Officers as soon as possible; and
  - not tell anyone other than the Disclosure Officers of the PID as this might put any subsequent investigation at risk.
- receiving an email, letter, facsimile or in some other non-verbal form you should:
  - send/provide the material to both the Disclosure Officers as soon as possible; and
  - not tell anyone other than the Disclosure Officers of the PID as this might put any subsequent investigation at risk.

2.14 Your role as a Receiving Officer concludes once you provide the information to the Disclosure Officers. You should not contact the discloser. Future contact arrangements will be determined by the Disclosure Officer. While you may be interested in actions that might follow you will not be informed and should consider the matter as concluded in terms of any further actions by yourself, unless otherwise instructed by a Disclosure Officer.

## **2.2 WHAT HAPPENS AFTER A PID IS PROVIDED TO AN AUDIT OFFICE DISCLOSURE OFFICER?**

2.15 The Disclosure Officer determines the process to be used for a PID based on:

- the entity to whom the PID relates (Audit Office, other ACT public service entity or an entity of the ACT Legislative Assembly);
- the willingness of the discloser to have their identity shared or whether the disclosure was made anonymously; and
- a consideration of potential risks to the discloser (refer to section 2.5).

2.16 A PID may also be referred to another ACT public sector entity with an investigative function (e.g. ACT Ombudsman) if the Auditor-General considers that the PID is more appropriately managed (or investigated) by that entity.

2.17 The Disclosure Officer is required to ensure that a discloser is made aware of the progress of PID at least once every three months, and advising them of when the processes for managing the PID within the Audit Office have closed.

### **2.2.1 PID related to the Audit Office**

2.18 A PID that relates to the Auditor-General will be referred to the Head of Service.

2.19 The Disclosure Officer will advise the Public Sector Standards Commissioner of having received an alleged/potential PID.

2.20 A Disclosure Officer will:

- nominate a Case Officer and in so doing check that there are no conflicts of interest that would prevent them handling the alleged PID;
- request the Case Officer to advise the Disclosure Officer on risk to the discloser (refer to section 2.5) and make an initial assessment to determine if a matter is a PID and provide a brief for the Disclosure Officer's consideration;
- assess if the disclosure is a PID and if:
  - yes, approve terms of reference for an investigation; formally advise the Public Sector Standards Commissioner of the receipt of a PID and initiate an investigation. Following the investigation examine the Case Officer's report and adopt, or modify, the identified actions (recommendations) from the investigation; and implement needed actions; advise the Public Sector Standards Commissioner and the discloser that the PID processes within the Audit Office have closed; or

- no, advise the discloser and the Public Sector Standards Commissioner outlining reasons for this decision.

2.21 If the Auditor-General considers, on reasonable grounds, that disclosable conduct has occurred, is likely to have occurred or is likely to occur in the Audit Office, the Auditor-General will take necessary and reasonable action to:

- prevent the disclosable conduct continuing or occurring in the future;
- discipline any person responsible for the disclosable conduct; and
- prevent the conduct continuing or recurring by, e.g., providing training to staff, modifying particular work practices or procedures, improving systems and controls, and instituting external reviews of particular activities.

### **2.2.2 PID related to another ACT public sector entity**

2.22 A PID relating to an ACT public sector entity, in general, is to be investigated by the head of the entity to which the PID relates.

2.23 The Disclosure Officer will advise the officers below of having received an alleged/potential PID matter relating to another ACT public sector entity:

- Head of the entity to which a PID relates; and
- the Public Sector Standards Commissioner.

2.24 The Disclosure Officer need not provide a copy of the PID to the Head of the entity or Public Sector Standards Commissioner if doing so is likely to adversely affect a person's safety or an investigation relating to the disclosure. The discloser's name and contact details will not be provided unless the discloser consents.

2.25 An Audit Office Disclosure Officer will therefore, in general, refer information to the affected ACT public sector entity to make the initial assessment and advise the Audit Office of its assessment. This can only be effectively done, however, if:

- there is sufficient and specific information to identify the matters of concern; and
- the discloser agrees that their name can be shared; or
- the discloser does not agree to their name being shared that there is sufficient information and the referring of information will not reveal the identity of the discloser.

2.26 A discloser's name or contact details will not be provided to another entity or the Public Sector Standards Commissioner unless the discloser consents.

2.27 However, the Head of the entity to which a PID relates and the Public Sector Standards Commissioner will always be advised of any PID matter relating to another ACT public sector entity that has been received by an Audit Office Disclosure Officer.

2.28 These officers will be advised according to the amount of information the discloser is willing to consent to being shared. A situation may occur, for reasons outlined in paragraph 2.20,



whereby all that can be said is that a PID has been received. If there is insufficient information or it cannot be referred to another ACT public sector entity it is unlikely that the matter will be able to be effectively resolved.

- 2.29 A referral made to an ACT public sector entity may be referred back to Audit Office. If this happens, and the Disclosure Officer agrees to accept the referral, the procedure outlined in 2.2.1 will be followed.
- 2.30 If the information and the name of the discloser can be shared, the discloser and entity will be advised to liaise directly with each other and informed that processes for taking any further action within the Audit Office will be closed.
- 2.31 There is an obligation on the entity to which a PID matter is referred to advise the Audit Office Disclosure Officer of the 'progress and outcome of the investigation'. The Audit Office will monitor that this advice is received.
- 2.32 If the discloser does not wish their name to be shared and the matter is referred to an ACT public sector entity, the Audit Office will need to be the contact point between the entity and the discloser. The discloser and entity will be advised that the Audit Office is acting as a conduit, not assessing the actions taken by the entity and that processes for taking any further action within the Audit Office will be closed. The entity will be advised that they must advise the Audit Office of the 'progress and outcome of the investigation'. The Audit Office will monitor that this advice is received.
- 2.33 If there is insufficient information or that which is provided cannot be shared because it would reveal the identity of the discloser the Audit Office Disclosure Officer may not be able to progress consideration of the PID. If this occurs the discloser will be advised that processes in the Audit Office have been closed.
- 2.34 If a PID is made regarding the Head of Service it will be referred to the ACT Ombudsman.

### **2.2.3 PID related to an ACT Legislative Assembly entity**

- 2.35 The Audit Office Disclosure Officer will assess information provided in relation to an ACT Legislative Assembly entity and identify the affected parties to determine the appropriate process for managing the PID. In particular does the matter relate to the Office of the ACT Legislative Assembly or another ACT Legislative Assembly entity.

### **2.2.3.1 Office of the ACT Legislative Assembly**

- 2.36 The Disclosure Officer will advise the officers below of having received an alleged/potential PID matter relating to the Office of the ACT Legislative Assembly:
- the Clerk of the ACT Legislative Assembly; and
  - the Public Sector Standards Commissioner.
- 2.37 A PID relating to the Office of the ACT Legislative Assembly will be treated as if the Clerk of the ACT Legislative Assembly were the head of an ACT public sector and therefore procedures outlined in section 2.2.2 will apply.
- 2.38 If a PID is made regarding the Clerk it will not be referred to the Clerk. It may be assessed and if relevant investigated by the Audit Office or referred to the ACT Ombudsman or the Public Sector Standards Commissioner or the Head of Service.

### **2.2.3.2 An entity of the ACT Legislative Assembly other than the Office of the ACT Legislative Assembly**

- 2.39 As mentioned in paragraph 2.35 the Audit Office Disclosure Officer will assess information provided and determine the process to be used. If the matter concerns a Member of the ACT Legislative Assembly it may be referred to the Commissioner for Standards (refer to the Office of the ACT Legislative Assembly's PID procedures available at [www.parliament.act.gov.au/](http://www.parliament.act.gov.au/)).

## **2.3 WILL A PID SOMETIMES NOT BE INVESTIGATED?**

- 2.40 The Disclosure Officer may decide not to investigate a PID on any of the grounds set out in section 20 of the PID Act, that is, if:
- the discloser has withdrawn the PID and the Disclosure Officer is reasonably satisfied that no further investigation is warranted;
  - the discloser has not provided their name and contact details and the Disclosure Officer is reasonably satisfied that the lack of information makes it impracticable to investigate the disclosure;
  - the Disclosure Officer is reasonably satisfied that:
    - the disclosed information is wrong in a material way and investigation is not warranted;
    - the age of the information makes investigation impracticable;
    - the substance of the PID has already been investigated under the PID Act or another law;
    - the discloser fails, without reasonable excuse, to assist in investigating the PID when asked and this makes investigation impracticable; or
    - a more appropriate way to deal with the disclosable conduct is reasonably available. This could be through the Auditor-General deciding to conduct a performance audit of an entity (refer to section 2.4) or referring the matter to the Public Sector Standards Commissioner if it were for instance a workplace grievance.

## 2.4 PIDS AND PERFORMANCE AUDITS

- 2.41 In certain circumstances the Auditor-General may decide to deal with matters raised in a PID by undertaking a performance audit. This could be for a matter directly referred to the Audit Office as a PID or it may even be for a matter being investigated or already investigated by another entity. The Auditor-General is not constrained or able to be directed in what is selected for examination in a performance audit. Performance audits are conducted using the Auditor-General's powers under the *Auditor-General Act 1996* and are not conducted under the PID Act.
- 2.42 If a performance audit is conducted, a report on the subject matter will be tabled in the ACT Legislative Assembly, and the discloser will continue to receive the protection they are given under the PID Act (including protection against detrimental action).
- 2.43 Material the discloser provides may be considered during the audit, however the discloser will not be kept informed of progress, or provided with information regarding the progress of the performance audit.
- 2.44 The commencement of a performance audit on matters that were the subject of a PID means that the Audit Office processes related to the PID are closed.

## 2.5 RISK ASSESSMENT AIMED AT PREVENTING DETRIMENTAL ACTION TO A DISCLOSER

- 2.45 Inappropriate behavior in the workplace, including ostracism, undermining of a person's authority, humiliation and questioning of motives can greatly increase stress and cause injury to someone who has made a PID.
- 2.46 It is an offence under the PID Act to take detrimental action against a person who has made or is intending to make a PID. Detrimental action is action that involves:
- discriminating against a person by treating, or proposing to treat, the person unfavourably in relation to the person's reputation, career, profession, employment or trade;
  - harassing or intimidating a person;
  - injuring a person; or
  - damaging a person's property.

### 2.5.1 Conducting a risk assessment

- 2.47 The Disclosure Officer will examine the risk associated with a discloser to determine whether any detrimental action is likely in their particular circumstances, the specific behaviours that could occur, the likelihood of the behaviours occurring and appropriate strategies to prevent or contain them. The risk assessment may include not only the risk of direct reprisal against the discloser, but also the risk of related workplace conflict.

2.48 Consultation with the discloser, and if possible their supervisor or their manager may be helpful in identifying potential risks, depending on the circumstances and the need for confidentiality.

2.49 Matters that indicate there may be a higher risk include where:

- a specific threat has been made against the discloser;
- there is a history of conflict between the discloser and others in the workplace;
- the discloser’s immediate work unit is small;
- the PID is about a more senior officer;
- the reported wrongdoing is serious;
- the reported wrongdoing is or was occurring frequently; and
- the reported wrongdoing is directed at the discloser.

2.50 Table 4 presents questions that can be used to determine the risk of reprisal or workplace conflict.

**Table 4: Questions to assist in determining the risk of reprisals or workplace conflict<sup>1</sup>**

<b>Threats or past experience</b>	<p>Has a specific threat against the discloser been made?</p> <p>Is there a history of conflict between the discloser and the subjects of the disclosure, management, supervisors or colleagues?</p> <p>Is there a history of reprisals or other conflict in the workplace?</p> <p>Is it likely that the PID will exacerbate this?</p>
<b>Confidentiality unlikely to be maintained</b>	<p>Who knows that the PID has been made or was going to be made?</p> <p>Has the discloser already raised the substance of the PID or revealed their identity in the workplace?</p> <p>Who in the workplace knows the discloser’s identity?</p> <p>Is the discloser’s immediate work unit small?*</p> <p>Are there circumstances, such as the discloser’s stress level, that will make it difficult for them to not discuss the matter with people in their workplace?</p> <p>Will the discloser become identified or suspected when the existence or substance of the PID is made known or investigated?</p> <p>Can the PID be investigated while maintaining confidentiality?</p>
<b>Significant reported wrongdoing</b>	<p>Are there allegations about individuals in the disclosure?</p> <p>Who are their close professional and social associates within the workplace?</p> <p>Is there more than one wrongdoer involved in the matter?*</p> <p>Is the reported wrongdoing serious?*</p> <p>Is or was the reported wrongdoing occurring frequently?*</p> <p>Is the PID particularly sensitive or embarrassing for any subjects of the disclosure, senior management, the agency or government?</p> <p>Do these people have the motivation to take reprisals – for example, because they have a lot to lose?</p> <p>Do these people have the opportunity to take reprisals – for example, because they have power over the discloser?</p>

<sup>1</sup> Adapted from NSW Ombudsman, *Managing risk of reprisals and conflict*, Public Interest Disclosure Guideline C4, p. 3.

<b>Vulnerable discloser</b>	<p>Is or was the reported wrongdoing directed at the discloser?*</p> <p>Are there multiple subjects of the disclosure?</p> <p>Is the PID about a more senior officer?*</p> <p>Is the discloser employed part-time or on a casual basis?*</p> <p>Is the discloser isolated – for example, geographically or because of shift work?</p> <p>Are the allegations unlikely to be substantiated – for example, because there is a lack of evidence?*</p> <p>Is the PID being investigated outside your organisation?*</p>
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\*Note: Risks of poor treatment for reporting wrongdoing identified by research (Brown, AJ (ed.) 2008, *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations*, ANU E Press, Canberra, pp. 137-164).

## 2.5.2 Managing the risk of reprisal within the Audit Office

- 2.51 The Disclosure Officers will ensure that all Audit Office staff members receive awareness training about their rights and responsibilities under the PID Act at least once every two years for ongoing staff and as part of the induction process for new staff.
- 2.52 If a PID is made in relation to conduct within the Audit Office, the Disclosure Officers will take appropriate action to prevent or control the risk of reprisal and associated workplace conflict. The Disclosure Officers will also monitor the situation to see if any additional measures are needed.

## 2.5.3 Managing the risk of reprisal where the discloser is in another entity

- 2.53 If a PID relates to the discloser's workplace in another entity, the Audit Office Disclosure Officer managing the PID will ask the discloser for their consent to their identity being made known to the head of the other entity. This will allow appropriate action to be taken to protect the discloser from reprisal.
- 2.54 If the discloser does not consent, their identity may still become apparent if an investigation is undertaken, particularly if the information is known to only a few people. The PID Case Officer will discuss these matters with the discloser.