

Australian Capital Territory

Public Interest Disclosure Guidelines 2013

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1 Name of instrument

This instrument is the *Public Interest Disclosure Guidelines 2013*.

2 Commencement

This instrument commences the day after notification.

Meg Brighton
Acting Commissioner for Public Administration
27 May 2013



Public Interest Disclosure Guidelines 2013

Made under the Public Interest Disclosure Act 2012

May 2013

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Commissioner's Foreword

It is critical to the proper functioning of the ACT Government and ACT Public Service (ACTPS) that the citizens we serve have trust and confidence in the integrity and probity structures that underpin the ACT's system of representative democracy. A focus on the desired standards of behaviour of the holders of public office – be they elected representatives or officials – plays an important role in this regard and is achieved through the maintenance of codes of conduct and legislative frameworks for decision making and behaviour.

It is also important that there be a range of measures and institutions that provide avenues for the independent review of decisions made and actions taken. Public interest disclosure (PID) legislation and processes form part of this governance framework and provide an opportunity for people to raise concerns about alleged wrongdoing in the public sector without fear of reprisal.

Governments and the public services that support them hold a special place in society, being entrusted to manage public resources and make decisions on the community's behalf. It is proper that mechanisms are in place to ensure these public resources are not wasted or used for individual gain.

The ACT Government is committed to creating and maintaining working environments in the ACTPS and other public sector agencies that encourage and facilitate the raising of concerns – and of new and innovative ideas – as part of an ongoing process of continuous improvement in service planning and delivery. The Head of Service, Mr Andrew Cappie-Wood, and I encourage any ACT public sector employee or member of the public who considers that they have witnessed conduct that may give rise to a PID to come forward and report it. The ACTPS aims to provide an environment where its employees feel confident and comfortable about reporting PIDs, and recognises its fundamental obligation to proactively deal with allegations of wrongdoing in a fair and robust fashion. Indeed, the maintenance of proper standards of integrity and probity in the discharge of official duties is central to the expectations of behaviour enshrined in the *ACTPS Code of Conduct* and comprises one of the four ACTPS Values.

Furthermore, the ACTPS believes that employees or members of the public who raise genuine disclosures of wrongdoing are acting in an exemplary manner by assisting in promoting open and accountable government, good management and continuous improvement. In recognition of this, the ACTPS is committed to ensuring that any employee who raises genuine concerns through proper processes about wrongdoing is protected from retaliation or reprisal.

Under the *Public Interest Disclosure Act 2012* (the Act), I am obliged to make guidelines about the way in which the ACTPS and other public sector entities covered by the Act should handle PIDs.

Under the Act, these Guidelines serve as a foundation for all ACT public sector entities which must develop their own internal procedures relating to the handling of PIDs.

A decision to make a PID is not an easy one. Decision making on a disclosure is similarly complex and sensitive. It is my hope that the Act and these Guidelines together provide a clear framework in which concerns can be aired appropriately, investigated fairly and properly, and responded to robustly.

It is my intention to review these guidelines in September 2013 in light of experience in administering the Act and in that context, I would welcome suggestions from users on areas for improvement, clarification, or elaboration.

A handwritten signature in black ink that reads "Andrew Kefford". The signature is written in a cursive, flowing style.

Andrew Kefford
Commissioner for Public Administration
May 2013

Introduction

The ACT Government recognises the inherent value in providing effective feedback mechanisms to find out what areas of government are working as well as highlighting areas for improvement. They are also an important means to support transparency and accountability in the public sector creating a channel for the reporting of wrongdoing in the delivery of government services.

The *Public Interest Disclosure Act 2012* (the Act) specifically encourages and enables anyone witnessing serious wrongdoing that falls within the definition of ‘disclosable conduct’ to raise concerns. It guarantees these concerns will be seriously considered and investigated where warranted. The Act sets out the strict legal obligations of those raising a potential PID (the discloser), the protections available for disclosers, how disclosures should be dealt with, and the obligations of staff who manage disclosures and PIDs.

These Guidelines are designed to explain and support PID arrangements and assist individuals who wish to make a disclosure, as well as ensure that ACT public sector entities have arrangements in place to consider disclosures and take appropriate action on PIDs. They will be reviewed periodically to ensure they meet the needs of users.

The Guidelines are broken into two parts:

- **Part One** is relevant to all readers. It looks at who and what is covered and provides general information about making a disclosure and the PID framework established by the Act.
- **Part Two** is about the coordination and handling of disclosures and PIDs. It has been written with an internal focus and aims to assist those with responsibility for managing disclosures and PIDs.

Part One

This part makes the distinction between a public interest disclosure and other types of feedback, looks at how to make a disclosure, the types of information that might amount to a public interest disclosure, protections available and what happens after a disclosure is made.

1. Public Interest Disclosures

There are many kinds of feedback ranging from formal client satisfaction surveys, general complaints and allegations, to personal grievances and workplace disputes. These guidelines deal with complaints raising suspected illegal or illegitimate practices relating to the work of the ACT Government and ACT public sector entities.

1.1 What is a Public Interest Disclosure?

Sometimes matters raised are so serious that they should sit outside normal complaint or feedback systems. Certain matters suggest serious or systemic concerns that may bring harm directly or indirectly to the general public, now, or in the future. These matters are outside of the bounds of the regular complaint handling process and are in a special category called a 'Public Interest Disclosure' (PID).

Reporting suspected wrongdoing is essential to the integrity of the ACTPS.

Disclosable conduct is more serious than a technical breach of policy or procedures: it is action (or inaction) that has a significant or widespread negative impact. Disclosures of this kind require a special type of treatment due to their seriousness. Likewise, a person disclosing information of this sort needs special protection for taking the risk of raising such serious allegations.

Employees who are prepared to speak up about wrongdoing in the public sector are recognised as one of the most important sources of information about problems that disadvantage or endanger others. People who raise concerns of this sort are sometimes called 'whistleblowers'.

Whistleblowing is important because it serves to uphold community standards and enhance the integrity of the public sector.

A disclosure becomes a PID when it is about *disclosable conduct*¹. Examples of disclosable conduct include:

¹ see the Glossary for a definition of 'disclosable conduct'

- corrupt conduct, e.g. accepting money or other benefits in exchange for helping someone to avoid prosecution, win a contract or gain Government approval;
- fraud or theft, e.g. falsifying documents or information, or stealing an employer's property or funds;
- official misconduct or maladministration, e.g. gaining personal benefit by not revealing a conflict of interest;
- harassment, intimidation or discrimination, e.g. assaulting a person during the course of carrying out their work functions, duties or responsibilities; or
- practices endangering the health or safety of staff, the community or the environment.

The legislation provides for a PID to be made about an ACT public sector entity, which is broadly defined to include anyone performing a function on behalf of the ACT government using public funds (i.e. all government agencies and their staff or contractors). In other words, a PID might be made about activity by an instrumentality, officer, employee, contractor, or anyone else who exercises a function on behalf of the Government.

A PID can be about the actions of permanent, temporary or casual staff and employees of the ACTPS, other ACT public sector entities, or the ACT Legislative Assembly (including ministers or Members of the Legislative Assembly).

It can also be about the actions of contractors, sub-contractors, consultants and volunteers working on ACT Government sponsored projects or on programs funded by the ACT Government. This might include not-for-profit or other non-government entities providing a public service to the community under a contract with an ACT public sector entity.

A PID might relate to events which are happening (or are strongly suspected of happening) now, in the past, or that may happen in the future.

A person may make a PID even if they are not able to identify a particular person who is responsible for the activity. Likewise, a PID might be made unintentionally, for example, during a casual conversation or other informal means.

If you are worried that something wrong or dangerous is happening within the ACT public sector, please don't keep it to yourself. Unless you pass on information about any concerns you may have about fraud, safety risks, or other wrongdoing, it is possible the problem won't become known until it's too late.

1.2 What is not a Public Interest Disclosure?

Not all concerns will amount to a PID. False allegations will not be a PID. Matters that affect only personal or private interests of an individual are unlikely to be a PID. Complaints relating to

individual employment and industrial matters, isolated allegations of bullying or harassment, personnel matters, individual performance management concerns and individual workplace health or safety concerns would not generally be considered a PID.

A PID is not a mechanism for solving a personal grievance. It is a process within government to deal with matters of a serious nature which if resolved would serve the public good.

Certain matters can be more appropriately addressed through other complaint handling mechanisms such as internal review or grievance resolution procedures, a workplace inspection or sometimes an industrial tribunal. If you think your concerns fall outside of the PID framework, as a first step you should speak to your manager, a work health and safety representative, or Respect, Equity and Diversity contact officer.

Table 1: Differentiating between a PID, complaints /grievances and Performance Management matters

If the matter involves:	Then it could be:
<ul style="list-style-type: none"> • <u>Unlawful activity</u> – has someone broken a law or engaged in illegal activity? • <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? • <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? • <u>Maladministration</u> – does the issue relate to waste or misuse of public funds or resources, organisational negligence, or failure to act? • <u>A danger to the health or safety of the community or environment</u> - is someone doing something that will adversely affect people’s health or damage the environment? 	<p>Public Interest Disclosure</p> <p>(talk to your manager, supervisor or disclosure officer)</p>
<ul style="list-style-type: none"> • <u>Industrial matters</u> – is it an issue relating to overtime, workload or working conditions? • Individual allegations of <u>bullying, harassment or discrimination</u>. • <u>Conduct</u> of an individual where the consequences do not have a widespread impact. 	<p>Complaint, grievance</p> <p>(talk to your supervisor, workplace representative or Human Resource area)</p>
<ul style="list-style-type: none"> • Issues relating to <u>underperformance</u>. • The exercise of duties without reasonable care or skill where the consequences are localised. • Issues relating to the way performance is <u>managed</u>. 	<p>Performance management or misconduct</p> <p>(talk to your supervisor)</p>

Every disclosure will be treated as being made in good faith. However, if it is found that a person has maliciously raised a concern that they know is untrue, protections are not provided and the person may be subject to disciplinary proceedings as articulated in the *Public Sector Management Act 1994* (PSM Act). Similarly, making a disclosure about your own conduct will not protect you from management or criminal action.

Making a disclosure to a journalist or Member of the Legislative Assembly other than in strictly defined circumstances (see Part 5 of the Act) may constitute an unauthorised release of official information and render the individual liable to misconduct proceedings under the PSM Act and/or prosecution under the *Crimes Act 1900*.

1.3 Relationship to other external scrutiny/compliant functions

In some situations it may be more appropriate that a concern or complaint is addressed under the statutory or regulatory provisions. For example, this may particularly be the case in relation to health concerns, where approaches can be made in appropriate circumstances direct to the Health Services Commissioner, the Clinical Practice Committee of the Health Directorate, or a nationally regulated health professional board. It is also possible for a Disclosure Officer under the Act to refer a matter to such bodies, or to decide not to investigate a matter if it is being, or has already been, dealt with by such an external scrutineer. Conversely there may also be occasions when a matter is brought to the attention of one of those entities but cannot be progressed by them. In such instances, if permissible under their own confidentiality and secrecy restrictions, they too should refer relevant issues to a Disclosure Officer under the Act.

2. Making a Disclosure

This section deals with the things someone considering making a disclosure needs to be aware of before they come forward.

Table 2: *Before making a disclosure*

1. Consider what have you witnessed or otherwise come to know. Is it
 - a. unlawful (has someone has broken a law or are they engaging in illegal activity?)
 - b. corrupt conduct (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.)
 - c. misconduct (see s.9 PSM Act and the *ACTPS Code of Conduct*)
 - d. maladministration (including public wastage, organisational negligence or inaction)
 - e. a danger to the health or safety of the community or environment (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?)
2. Think about what you are reporting. Is the information rumour or fact? Can you provide evidence to support your assertions?
3. Is your belief reasonable? Have you run it past a trusted colleague or friend, and do they think you are being reasonable?
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?)
5. Does the issue have wide ramifications (and longer term implications)?
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.
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:
 - 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 ACT public sector entity or the Commissioner for Public Administration. Only in very specific circumstances can a disclosure be made to a journalist or a Member of the Legislative Assembly.
 - 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.
 - 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.

2.1 Who can make a disclosure?

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, and members of the public.

Here are some tips for raising a concern:

- Raise it when it's a concern – you won't be asked to prove it.
- Keep it in perspective - there may be an innocent explanation.
- Stay calm - you're doing the right thing.

If you are unsure about whether or how you can make a disclosure, you can always approach the Commissioner for Public Administration for confidential advice.

2.2 How should a disclosure be made?

A disclosure can be made in any way; there is no 'right' or 'wrong' way. It can be oral, via the telephone or in person, or in writing, by an email, a feedback form or in a letter. It does not have to be a formal complaint or report to be a disclosure.

Before making a disclosure, you should think about the problem and what you think should be done to fix it. You should try to communicate these things when making your disclosure and provide as much detail as will be needed to resolve the issue, but no more. This might include the main facts, dates and times, and steps already taken to resolve the problem.

If you make your disclosure in person or over the phone, the receiver will make a written record of the conversation. For this reason, it is best to document the details of your concern in a letter or email.

There are a number of people you can approach in order to make a disclosure:

Every ACT public sector entity has at least one **disclosure officer** who has been given special responsibility and training in dealing with disclosures and PIDs.

- In relation to the ACTPS, a disclosure can be made to a Director-General or the Head of Service.
- If there is a governing board, a disclosure can be made to a board member.
- For matters that relate to the Legislative Assembly, a disclosure can be made to the Clerk of the Legislative Assembly.
- Disclosures can also be made to the Commissioner for Public Administration, the ACT Auditor-General, or the ACT Ombudsman.
- For employees of the ACTPS, a disclosure can be made to your supervisor or manager.

For employees in the ACTPS, if you feel that the matter is so serious that you cannot discuss it internally, you should inform the Commissioner for Public Administration, ACT Auditor-General or the ACT Ombudsman.

Remember that while you will not be required to satisfy a legal level of proof, a discloser must have good reasons or evidence for their suspicions.

2.3 Making a disclosure inadvertently

A disclosure may be made without the discloser asserting that the disclosure is made under the Act.

Because a disclosure can be made inadvertently, it emphasises the importance of all employees being aware of this type of disclosure and that managers and supervisors be aware of their possible role as a *receiving officer*².

Essentially this means that a disclosure could be made unintentionally, possibly during a casual conversation, or without the person claiming that the information is provided as a disclosure. For example, while chatting in the kitchen, a colleague might mention that an invoice was received for furniture that was never delivered. This should be addressed as a disclosure.

Similarly, you may find yourself in a situation where you inadvertently witness the disclosure of information which you suspect is wrongdoing. For example, you may overhear a conversation in the lift that a manager has selected their own family member through a recruitment process without declaring a conflict of interest. This should also be addressed as a disclosure.

Although you may not be directly involved in the discussion or actions, you may have nonetheless witnessed wrongdoing. It is strongly encouraged that you report these matters to a supervisor or disclosure officer.

2.4 Making a disclosure anonymously or in-confidence

The chance of an outcome will be more likely where the identity of a discloser is known. However, a PID can be made ***anonymously***, where the discloser does not identify themselves at all (for example an anonymous phone call or letter).

Remember that if you make a disclosure anonymously, it will not be possible for the decision maker to seek clarification, therefore it is essential that as much information is provided as possible. In weighing the veracity of any anonymous complaint, decision makers will have regard to the extent to which the allegations made can be independently verified. If enough information is provided, anonymous reports may be inquired into, however it will not be possible to keep the discloser protected or informed about that status of their disclosure.

A disclosure can also be made ***in-confidence***, where the discloser asks that they not be revealed as the source of the disclosure. Where a disclosure is made in-confidence, the discloser's identity will not be revealed without that person's consent unless required by law.

² Refer to Section 4 of these Guidelines

Both anonymity and confidentiality may have practical implications in consideration of a disclosure.

There may be times when a concern cannot be examined without revealing the discloser's identity, for example where personal evidence is essential. In such cases, the matter will be discussed with the discloser.

Where a disclosure is made anonymously, it is generally more difficult for an entity to look into the matter. It is also not possible to protect the discloser or keep them informed of the process.

However, in some circumstances a discloser's identity may be required by law, for example for a witness of an assault in a workplace.

2.5 Protection for people who make a disclosure

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

If a person retaliates against the discloser by directly or indirectly punishing them for reporting information, they will be held accountable for their behaviour.

There can be serious consequences for reprisals. Under section 40 of the Act the person who takes detrimental action has committed an offence. This person may also be pursued for damages in court (section 41).

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.

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

Vexatious disclosures may be investigated, however where a person makes a disclosure vexatiously or with otherwise unethical intentions, they will lose the protections provided in the Act.

Protection will not be provided to people who knowingly make false claims.

2.6 Making a disclosure externally

Usually, issues should be reported to the disclosure officer in the relevant ACT public sector entity in the first instance.

Under certain circumstances, the discloser may make a disclosure to a third party, specifically, a journalist or a Member of the ACT Legislative Assembly.

Protection only applies to disclosures made in this way under very specific circumstances, specifically where:

- an entity refuses or otherwise fails to look into your disclosure;
- where an entity agrees someone has acted inappropriately but the entity does not act to address the problem; or
- where you have not been told about progress on your disclosure within the statutory timeframe.

Where an ACT public sector entity fails in their duty to manage a disclosure according to the recommended process, a person may be entitled to make their disclosure 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 Act.

This part of the Act emphasises the onus on ACT public sector entities to understand and manage disclosures and the PID process as per the Act in every instance.

If you believe the conduct involves many people or is so deeply embedded in the culture of an entity and for this reason making an internal disclosure is unlikely to be taken seriously or may be detrimental to your health or wellbeing, you may make a disclosure to a third party. Section 27 of the Act permits this where a person honestly believes on reasonable grounds that:

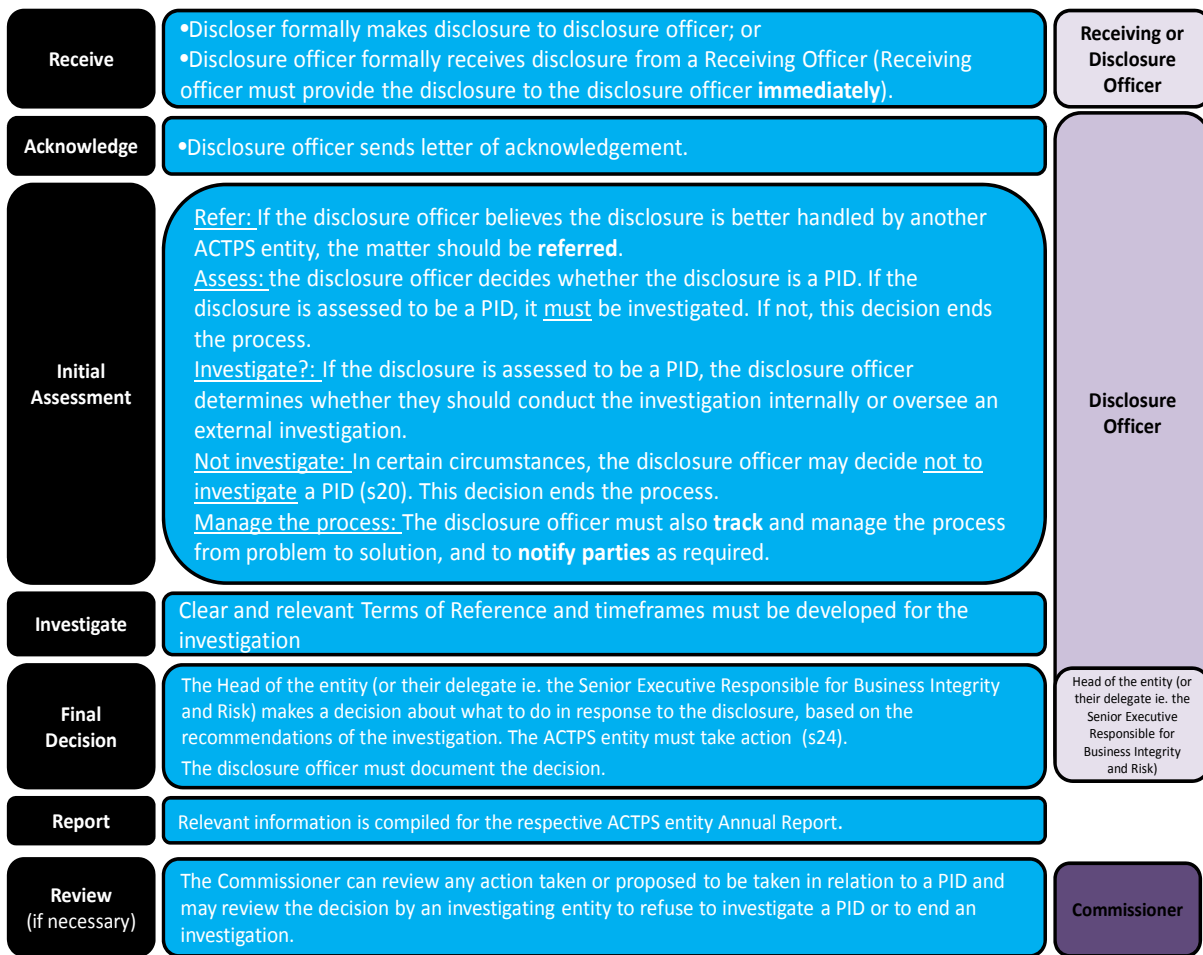
- he/she has information that tends to show disclosable conduct;
- there is a significant risk of detrimental action to him/herself or someone else if a disclosure is made through the usual process; and
- it would be unreasonable to make a disclosure through the usual process to a person mentioned in section 15 of the Act.

If you approach a third party in this manner, you:

- must disclose sufficient information to demonstrate disclosable conduct but should not provide more than is reasonably necessary; and
- may inform an MLA or journalist about the progress and outcome of any investigation of a PID you have made.

2.7 What happens after a PID has been made?

The steps in this process are laid out in detail in Part 2 of these guidelines. Each ACT public sector entity will also have a short document outlining their internal processes based on these guidelines.



Receive

Once the disclosure officer has received the disclosure (either from a *receiving officer*³ or the discloser) the process begins. It is the disclosure officer’s responsibility to manage the process from beginning to end.

Acknowledge

The disclosure officer should thank the discloser for making the disclosure and acknowledge their courage to raise the matter by providing an acknowledgement letter⁴.

Initial Assessment

Refer

The disclosure officer will assess whether the disclosure should be referred⁵ to another ACT public sector entity for their consideration.

³ Refer to section 5 of these guidelines

⁴ Refer to section 6.2 of these guidelines

⁵ Refer to section 6.3 of these guidelines

Assess

Most importantly, the disclosure officer will make a decision as to whether the disclosure is **in fact a PID**. To support this decision, the disclosure officer may seek advice from GSO, or from an investigating entity.

If the disclosure officer has decided that the disclosure is a PID, the discloser will be notified within three months of who will be handling the matter, how they can be contacted, and what further assistance may be needed.

Investigate?

If the disclosure officer has assessed the disclosure is a PID, the disclosure officer decides whether their entity should conduct the investigation internally or oversee an external investigation.

Not investigate?

In certain circumstances, the investigating entity may make a decision not to investigate a PID (s20). This is a decision that would end the process.

Manage the process

The disclosure officer has the responsibility to:

- track the PID process from problem to resolution; and
- notify relevant persons.

Investigate

The disclosure officer must develop clear and relevant Terms of Reference, including timelines. The investigation is undertaken.

Final Decision

The Head of the entity (or their delegate ie. the Senior Executive Responsible for Business Integrity and Risk) makes a decision based on the recommendations of the investigation and drafts a report documenting their decision about the PID⁶.

The ACT public sector entity must take action.

The Commissioner for Public Administration (the Commissioner) must be informed.

Following completion of the investigation, the disclosure officer must inform the discloser:

- of the outcome of any investigation; or
- if it is decided that the investigation will be ended, including the reason for this decision and how this complies with section 20 of the Act.

However, the discloser is not entitled to all the information obtained during the course of investigating a PID. The discloser does not have to be kept informed where this is likely to bring risk to a person's safety or an investigation relating to the PID.

Report

Under section 45 of the Act, the following information must be provided in an ACT public sector entity's Annual Report :

- number of PIDs made;

⁶ See section 6.5 of these guidelines

- number of investigations carried out;
- number of investigations completed; and
- average time taken to complete investigations.

However, the annual report must not include protected information (see section 44 (6)).

Review

It is suggested good practice for respective ACT public sector entities to take the opportunity when afforded to review their procedures.

The Commissioner has a role in overseeing the action taken once a PID has been made, and will ensure all matters are handled fairly and properly (see part 7 of these guidelines). This includes:

- reviewing a decision by an investigating entity to refuse to investigate a PID or to end an investigation; and
- any action taken, or proposed to be taken in relation to a PID.

2.8 What happens if I think my disclosure is not handled properly?

If a discloser is unhappy with the process used to deal with their disclosure, they should first talk to the disclosure officer and head of the relevant entity to better understand the process which was used. The disclosure officers are responsible for making clear to a discloser how their disclosure was handled and any steps taken to address their concerns.

If you think a matter has not been handled appropriately, there are certain checks and balances in place to ensure a matter receives a fair and proper hearing.

If you are dissatisfied with the outcome of an investigation, the Commissioner for Public Administration is able to review an investigation or any aspect of the handling of a disclosure. Additionally, the Ombudsman may look into any matter dealt with under the Act.

If you have contacted your disclosure officers and are still unsatisfied with how your disclosure has been handled, you can contact the Commissioner for Public Administration for further advice.

2.9 What happens if my disclosure is determined not to be a PID?

Sometimes your concerns, even though warranted, will not be serious enough to amount to a PID. There may be occasions when a disclosure is made either with an ulterior motive or maliciously. In

such a case, an ACT public sector entity is unable to provide the assurances and safeguards to someone who is found to have maliciously raised a concern that they also know to be untrue.

If it is found that your concerns are false or otherwise misplaced they will not be dealt with as a PID. If information is assessed and determined not to be a PID, the discloser must be informed and given reasons for the decision.

All decisions made under the Act are subject to review. You are entitled to be informed of this and provided with information about how to seek a review. You may wish to seek clarification from the disclosure officer (an internal review), or a formal review by the Commissioner for Public Administration.

The Ombudsman is also available to investigate complaints about the actions and decisions of ACT public sector entities to determine if they are wrong, unjust, unlawful or discriminatory. As a general rule, however, the ACT Ombudsman will not investigate a complaint unless the concern has been raised with the ACT public sector entity concerned and an attempt has been made to solve the problem.

It is essential that you are aware of what a PID is before making a disclosure (see section 1.1 & 1.2 of these guidelines). Consider closely whether your concerns and what you want to happen only affect you, or have a wider impact. It is possible that other avenues to pursue your concerns may be more suitable.

It is important to recognise that disclosure officers are independent officers trained in handling disclosures and making decisions about PIDs.

Part Two

This part outlines the integrated management approach ACT public sector entities should follow in handling PIDs. It will be of particular use to those involved in receiving and managing PIDs. It outlines the responsibilities of disclosure officers, ACT public sector entities and the Commissioner for Public Administration (Commissioner).

It articulates what to do when a disclosure is received or PID suspected, the types of information that might amount to a PID, the steps a disclosure officer should follow in actioning a disclosure, the parameters an ACT public sector entity must work within in handling a disclosure, and the functions of the Commissioner in overseeing the handling of disclosures.

It also reminds ACT public sector entities of their reporting responsibilities.

3. Responsibilities of ACT public sector entities

3.1 What must each ACT public sector entity do under the Act?

Each ACT public sector entity has a number of responsibilities under the Act. Each must:

- declare at least one disclosure officer⁷;
- develop procedures with the approval of the Commissioner, including:
 - keep the list of disclosure officers current; and
 - make information on procedures accessible;
- notify the Commissioner of any disclosures (which have been determined to be PIDs);
- determine whether to investigate a disclosure or whether a matter needs to be referred to another ACT public sector entity for investigation;
- keep the discloser and other parties informed during the process in accordance with the timeframes and other requirements in the Act; and
- take action if disclosable conduct is proven.

The head of each ACT public sector entity has responsibility for these actions and should determine whether delegations are to be established for any aspect of these actions.

3.2 Procedures by each ACT public sector entity

ACT public sector entities are required to prepare and publish procedures about how they intend to deal with disclosures. Procedures adopted by entities should articulate consistent expectations and responsibilities with the goal of ensuring the links in the chain of command actioning disclosures is known and followed.

Procedures must be approved by the Commissioner for Public Administration

⁷ See section 5 of these guidelines

Entities are strongly encouraged to adopt the procedures articulated in these guidelines. As a minimum, they should be based on the following principles:

- all staff, contractors and volunteers, as well as members of the public, are entitled to make a PID;
- all supervisors and managers are potential *receiving officers* and should be aware of their responsibilities in the event that a PID is made to them, including inadvertent PIDs;
- disclosers are protected from reprisals and detrimental action; and
- confidentiality is to be maintained as far as possible without obstructing an investigation.

The procedures must include information and guidance on:

- who can make a PID;
- who can receive a PID and what they must do with the information disclosed including reporting requirements;
- who will be responsible for determining whether an investigation is required and how it should be conducted;
- who is responsible for keeping the discloser informed;
- how a discloser will be protected from detrimental action;
- who is the decision maker in relation to PIDs; and
- how record keeping requirements will be met.

3.3 Other actions by each ACT public sector entity

Each ACT public sector entity should review their procedures periodically. Every three years is recommended.

The following issues should be considered.

- Whether the procedures are adequate to track the actions taken in relation to concerns disclosed and to ensure appropriate follow-up action has been taken to investigate and, if necessary, resolve problems indicated by the disclosure.
- Is there evidence of constructive and timely feedback?
- Have there been any difficulties with confidentiality?
- Have any events come to light that might indicate that a staff member has not been fairly treated as a result of raising a concern?
- Did significant adverse incidents/incident management systems or regulatory intervention occur?
- Could the issues have been picked up or resolved earlier?

Each ACT public sector entity should periodically ensure staff are aware of the procedures and the intention of the legislation.

Disclosure officers and delegates should receive training on their role and responsibilities.

Where appropriate, reporting successful outcomes from PIDs can encourage and reassure everybody that PIDs are taken seriously and acted upon.

ACT public sector entities should consider:

- comparing and correlating disclosure data with information from other risk management systems; and
- gauging staff awareness and trust of PID arrangements.

3.4 Reporting

Each financial year, an ACT public sector entity must detail the number of disclosures made, number of investigations carried out, number of investigations completed and the average time taken to complete an investigation in their annual report.

The annual report must not include protected information⁸

4. What to do if someone makes a PID to me

4.1 Am I likely to receive a PID?

If you suspect that you have come across information that may involve disclosable conduct, or if you are unsure, then you have a responsibility to pass that information to your manager, supervisor or a disclosure officer.

While there are disclosure officers in each ACT public sector entity, other ACT public sector employees have responsibilities as *receiving officers*, specifically:

- if you are an ACTPS employee with responsibility for supervising staff, you could receive a PID from one of your staff and you must pass disclosures received to a disclosure officer for action;
- if you are the member of the governing board of an ACT public sector entity, you could receive a PID in relation to that entity and you must pass disclosures received to a disclosure officer; or
- if you are in a position where you receive information about matters such as funding, conduct, whether administrative procedures have been followed, health or safety risks, or environmental risks – such as a chief financial officer, workplace health and safety representative, bullying and harassment contact officer, or member of an audit committee – you could receive a PID.

Managers and supervisors should report to a disclosure officer even if they are unsure their concerns are a PID.

If you receive a PID and therefore have become a receiving officer, you are not responsible for making a decision about a PID. You must pass that information to a disclosure officer.

⁸ See Glossary for definition of protected information

4.2 What should I do at the time of receiving a PID?

Given the seriousness of making a disclosure, it is important that their disclosure is acknowledged, and that they are commended for taking this action.

- It is suggested the disclosure officer provide a letter for the receiving officer to send to acknowledge the discloser's courage to report the matter.

If the matter is raised orally, make a written note including details of the discloser and any individuals implicated in the matter. Inform the discloser that they will probably be asked to check, sign and date the record.

There are certain general principles to follow when receiving a disclosure.

- Thank the discloser for raising the concern, even if they may appear to be mistaken.
- If you are not a disclosure officer for your entity, let the discloser know that you will inform the disclosure officer.
- Respect promises of confidentiality where applicable.

If you are not the disclosure officer and you suspect you have received a disclosure, **inform the disclosure officer as soon as possible**. Do not attempt to investigate the matter yourself and do not tell others about the disclosure as this might put the discloser or any subsequent investigation at risk.

5. Disclosure Officers

The role of a disclosure officer is to make an initial assessment of a complaint and act as a central coordination point for all matters relating to public interest disclosures.

A consistent criticism levelled at disclosures that are poorly managed is that often the links in the communication chain break down and disclosures slip between the cracks or fail to be investigated when they should be. **It is the responsibility of a disclosure officer to ensure this does not happen.**

Under the Act, heads of ACT public sector entities are disclosure officers. This means that Directors-General, the Clerk of the Legislative Assembly and other executive or statutory officers with overall management responsibility for an ACT public sector entity (eg. Director of CIT, CEO of Calvary Health Care ACT) are disclosure officers under the Act.

Section 11(2) of the Act requires the head of an ACT public sector entity to also declare at least one other person to be a disclosure officer in their entity. Other than the head of the entity, it is recommended that the disclosure officer declared be a Senior Executive Responsible for Business Integrity and Risk (SERBIR).

The role of the disclosure officer is to receive a disclosure and to support the discloser.

The disclosure officer ensures appropriate action is taken in response to a disclosure and maintains the effective administration of the process.

Note that for more serious matters the following positions are authorised to act as disclosure officers and must meet the requirements of the Act if a disclosure is made to them:

- the Commissioner for Public Administration;
- the Head of Service;
- the Auditor-General; and
- the ACT Ombudsman.

6. Guidance for Disclosure Officers

The following table outlines the steps that should be undertaken by a disclosure officer upon receiving a disclosure.

Remember, disclosure officers must take their responsibilities under the legislation seriously. It is imperative that the process is followed to retain the integrity of the ACT public sector.

Step	Information	ACTION
1: RECEIVE	<p>Discloser formally makes a disclosure to a disclosure officer or receiving officer</p> <p>OR</p> <p>Disclosure officer receives a disclosure passed to them from a receiving officer.</p> <p>If necessary, the receiving officer must provide the disclosure to the disclosure officer immediately</p>	<p>Make written notes if matter is orally raised.</p> <p>Manage expectations and respect promises of confidentiality where applicable.</p> <p>Move to Step 2</p>
2: ACKNOWLEDGE	<p>It takes courage to raise a disclosure, therefore the discloser must be afforded appropriate recognition.</p> <p>The disclosure should be reassured that their complaint is receiving attention.</p>	<p>Thank discloser for making the disclosure.</p> <p>It is suggested the disclosure officer provides an Acknowledgement letter at this stage - the letter should also outline the process the disclosure officer will undertake in handling the disclosure.</p> <p>Move to Step 3</p>
3: INITIAL ASSESSMENTS Covers five steps of assessment	<p><u>Refer</u></p> <p>Disclosure officer must consider whether the disclosure would be better handled by another entity</p> <p>Does it relate to another entity's staff or resources?</p> <p>If yes, disclosure officer determines which ACT public sector entity the matter should be provided to for action</p>	<p>If yes:</p> <ul style="list-style-type: none"> • Provide a referral form to notify the respective disclosure officer in the other entity of your decision; and • notify the discloser of your decision. <p>This letter closes the process from your entity's perspective; however, you will be kept informed as you have now become the referring entity (section 22).</p> <p>If No Move to Assess</p>
		<p>If yes – Check your internal procedures & notify. Move to Investigate.</p> <p>Disclosure officer must provide a copy of the PID to:</p>

	<p><u>Assess</u> Is the disclosure a PID? It is imperative for the disclosure officer to make a decision as to whether the disclosure is in-fact a PID. If in doubt, engage an investigator or seek further procedural advice from the Commissioner or legal advice from the Government Solicitor.</p>	<ul style="list-style-type: none"> • The head of each ACT public sector entity to which the PID relates; and • The Commissioner for Public Administration. <p>If No - Write to the discloser explaining why their disclosure is not a PID (see s20) and advise other avenues for their complaint to be examined eg. Grievance review, WorksafeACT etc</p> <p>This letter closes the process, subject to a request to review the decision.</p>
	<p><u>Investigate</u> If the disclosure is assessed to be a PID, and the disclosure officer makes a decision to investigate the PID</p>	<p>Disclosure officer determines:</p> <ul style="list-style-type: none"> • the matters to be resolved • resources required <p>how the investigation will be managed (external vs internal)</p> <p>Move to Manage the process</p>
	<p><u>Not investigate</u> In certain circumstances the disclosure officer may make a decision not to investigate a PID. This is a decision that would end the process</p>	<p>An investigating entity may decide not to investigate a PID (s20) but they must provide REASONS and INFORM discloser, head of the entity and Commissioner.</p> <p>This letter closes the process, subject to a request to review the decision.</p>
	<p><u>Manage the process</u> The disclosure officer has the responsibility to track and manage the process from problem to solution, and to notify as required.</p>	<p>Move to Step 4</p>
<p>4: INVESTIGATE</p>	<p>Only occurs once the disclosure officer makes a decision that the matter is complex or an investigation is otherwise needed</p> <p>Clear and relevant Terms of Reference must be developed for the investigating entity</p>	<p>Develop Terms of Reference for investigation</p> <ul style="list-style-type: none"> • who is involved? when did it happen? • has disclosable conduct occurred? • what type of conduct? • what can be done to remedy the wrong • what can be done to ensure it doesn't happen again • timeframes <p>Same ToR for internal and external investigations. Clarify timeframes for investigation.</p> <p>UPDATE discloser and CPA at least once every 3 months</p> <p>Move to Step 5</p>
<p>5: FINAL DECISION</p>	<p>The Head of the entity (or their delegate ie. the Senior Executive Responsible for Business Integrity and Risk) makes a decision based on the recommendations arising from the investigation and drafts a report documenting their decision.</p>	<p>The public sector entity must take action to:</p> <ul style="list-style-type: none"> • prevent the disclosable conduct continuing; and • discipline any person responsible for the disclosable conduct(s24) <p>Document your decision and reasons for making the decision!</p> <p>Following completion of the investigation, the discloser, Commissioner and head of the entity must be informed:</p> <ul style="list-style-type: none"> • of the outcome of any investigation; or • if it is decided that the investigation will be ended, including the reason for this decision and how this complies with section 20 of the Act.

		<p>However, the discloser is not entitled to all the information obtained during the course of investigating a PID. The discloser does not have to be kept informed where this is likely to bring risk to a person's safety or an investigation relating to the PID.</p> <p>This report closes the process, subject to a request to review the decision.</p>
6: REPORT	<p>Where relevant:</p> <ul style="list-style-type: none"> • number of PIDs made; • number of investigations carried out; • number of investigations completed and; • average time taken for completed investigations 	Provide information for your entity Annual Report - check section 45 of the Act.
7: REVIEW	ACT public sector entities should periodically evaluate the effectiveness of their PID procedures and whether the outcomes are meeting the objective of the Act.	ACT public sector entities should monitor and evaluate the effectiveness of their PID procedures.
Best practice		
Commissioner for Public Administration	<p>Be aware the Commissioner has a role in overseeing the actions taken by ACT public sector entities and will ensure all matters are handled fairly and properly. This includes:</p> <ul style="list-style-type: none"> • reviewing a decision by an investigating entity to refuse to investigate a PID or to end an investigation; and • any action taken, or proposed to be taken in relation to a PID. 	ACT public sector entities must be aware that the Commissioner is informed at each significant stage in the process of handling a disclosure. Where irregularities occur or potentially insufficient actions are taken, the Commissioner will actively intervene in the handling of a disclosure.

6.1 Step 1 – Receive

Under the Act, if you have been designated as a disclosure officer, it means **you are the officer declared by the head of your respective ACT public sector entity to make decisions about PIDs.**

As a disclosure officer, it is your responsibility to take care of the discloser and manage any repercussions arising from the disclosure. This includes notifying relevant ACT public sector entities, the Commissioner, and the discloser of any referrals and/or decisions made throughout the process as per the Act.

If you are a *receiving officer*, you must provide the disclosure to a disclosure officer **immediately**. If you have received the disclosure orally, or in a phone call, you must scribe the disclosure as accurately as you can using the disclosers words and provide this to the disclosure officer. Where possible, the discloser should be given the opportunity to edit the record of the conversation.

6.2 Step 2 – Acknowledge

Given the seriousness of making a disclosure, it should be acknowledged that the person making the disclosure will most likely be in a position of high stress. It is important that this is acknowledged and that they are commended for taking this action.

It is suggested the disclosure officer provide a letter of acknowledgement at this stage to demonstrate the acknowledgement of the disclosers courage and to outline the process the disclosure officer will undertake in relation to the disclosure.

The entity's procedure statement should also be provided to the discloser at this stage to ensure they understand the process involved in managing a disclosure.

6.3 Step 3 – Initial Assessments

Refer

If you are a disclosure officer and you believe the disclosure should be in the hands of another ACT public sector entity, you should provide the disclosure to that entity.

The **disclosure officer must decide** if the disclosure is better handled in another ACT public sector entity. For example, if the PID:

- involves a staff member from another ACT public sector entity; or
- involves a program managed under another entity; or
- relates to an entity which is funded by another ACT public sector entity.

A *Referral Form* template is provided as an Appendix to these guidelines.

Assess

It is imperative for the disclosure officer to make a decision whether the disclosure is in-fact a PID.

Part One of the guidelines will assist you in making this decision.

Remember that PIDs are about serious and systemic concerns; personal or other relationship based problems alone will rarely amount to a PID.

Questions to consider include the type of conduct involved, how serious it is, how many people are involved, and the seniority of those involved or affected.

- Is the conduct of a type referred to in the Act or these Guidelines?
- Is the behaviour systemic?
- Are amounts involved substantial?

Situations that appear to involve false or vexatious allegations should be handled carefully. The starting point for any disclosure officer is to look at the concern and examine whether there is any substance to it. Every concern should be treated as made in good faith, unless it is subsequently found not to be. However, if it is found that the individual has maliciously raised a concern that they know is untrue, disciplinary proceedings, as articulated in the *Public Sector Management Act 1994*, may be commenced against that individual, and as a result, the protections provided under the PID Act can be removed.

Should the disclosure officer require further information to support their decision whether the disclosure is a PID, they should seek evidence by engaging an *investigating entity* or seek legal advice from the Government Solicitor.

Investigate

Once a disclosure officer has decided a disclosure is in-fact a PID and requires investigation, the head of the ACT public sector entity to which the PID relates is responsible for investigating the PID. It is suggested the head of an ACT public sector entity delegates investigative responsibilities to the disclosure officer upon designation⁹.

There are three cases where the head of an ACT public sector entity may not be responsible for investigating a disclosure. These are where a disclosure involves the head of the entity, the Head of Service, or the Commissioner. Where a PID relates to a head of public sector entity, the Head of Service must investigate the disclosure. However, if a disclosure relates to the Head of Service, the ACT Ombudsman may investigate the disclosure or refer it to the head of another ACT public sector entity. Similarly, where a PID relates to the Commissioner for Public Administration, the Head of Service must investigate the disclosure.

Before the investigation is undertaken, the disclosure officer must:

- decide whether the investigation be conducted internally, or whether an external investigation is required; and
- develop clear Terms of Reference, including timeframes.

Not investigate

In certain circumstances the disclosure officer may make a decision not to investigate a PID, specifically where:

- the discloser has withdrawn the PID and the investigating entity is reasonably satisfied that there are no further matters in the disclosure that warrant investigation;
- the discloser has not disclosed his or her name and contact details and the investigating entity is reasonably satisfied that this lack of information makes it impracticable for the disclosure to be investigated;
- the discloser fails, without reasonable excuse, to give assistance when requested from the investigating entity;
- the investigating entity is reasonably satisfied that the disclosure information is wrong in a material way and investigation of the disclosure is not warranted;
- the investigating entity is reasonably satisfied that the age of the disclosed information makes it impracticable for the disclosure to be investigated;

⁹ See disclosure officer form at Appendix

- the investigating entity is reasonably satisfied that the substance of the disclosure has already been investigated under the Act or another law in for in the ACT; or
- there is a more appropriate way reasonably available to deal with the disclosable conduct in the disclosure.

If an entity declines to investigate a disclosure, they must provide reasons and inform the discloser as well as the Commissioner.

Manage the process

Each ACT public sector entity must establish a means of tracking PIDs and develop internal procedures to monitor a PID throughout the process. This information can also be used for reporting purposes in accordance with your entity's Annual Report (see Step 6 below, or section 45 of the Act).

Under Section 17 of the Act, you must provide a copy of the PID to:

- The head of each ACT public sector entity to which the PID relates; and
- The Commissioner for Public Administration.

6.4 Step 4 – Investigate

The investigation is undertaken as per the Terms of Reference. Remember that the purpose of the investigation is not to decide whether something has or has not been done, but it is an information gathering process.

The basic framework for developing a terms of reference is to aim to answer **who-when-where-what-how** questions.

In conducting an investigation, ACT public sector entities must collect and document information in a fair and unbiased way; inform people of the nature of allegations and give them time to reflect on this information before seeking their input; allow people the opportunity to state their case and respond to subsequent allegations; avoid using investigators with a personal interest in an investigation; and ensure any investigation is and is perceived as being conducted fairly.

The disclosure officer must be mindful of notifying requirements (by the *investigating entity*) under sections 22, 23 and 25 of the Act, specifically, informing the:

- referring entity (where applicable);
- discloser; and
- Commissioner for Public Administration.

The investigating entity for a PID must refer the PID to the Chief Police Officer if satisfied on reasonable grounds that the disclosable conduct the subject of the PID involves, or could involve, an offence.

The outcome of an investigation into a PID results with the *investigating entity* providing recommendations to the disclosure officer.

6.5 Step 5 – Final Decision

Upon completion of the investigation, the Head of the entity (or their delegate ie. the Senior Executive Responsible for Business Integrity and Risk) may make a decision based on the recommendations provided by the investigating entity.

Disclosure officers should consider a graduated response, ie. any action taken should be commensurate with the seriousness of the incident.

Under section 24 of the Act, the ACT public sector entity must take action to:

- prevent the disclosable conduct continuing; and
- discipline any person responsible for the disclosable conduct.

Bear in mind that you may have to outline how you handled the PID and justify your decisions. Therefore management of a PID and tracking of the process used is paramount.

When coming to a decision, a disclosure officer should always act within the bounds of the legislation, apply the principles of natural justice, be consistent and reasonable in your decisions, and make clear and documented decisions.

Once a disclosure officer has made a decision, a report must be made about the PID and provided to the discloser, head of the entity and Commissioner. For consistence across government, a template for a Report is located at the Appendix. Disclosure officers must be aware of FOI requirements and privacy concerns when preparing reports.

A report is a chronology of events, an account of what was found during the investigation, and how a decision was reached. It should contain general information about the complaint or allegation, what happened in response and how the problem was fixed. It might also be useful to include information about whether any detrimental action occurred in response to the disclosure and what was done to manage this.

6.6 Report

Under section 45 of the Act, the following information must be provided in an ACT public sector entity's Annual Report:

- number of PIDs made;
- number of investigations carried out;
- number of investigations completed; and
- average time taken for completed investigations.

The annual report must not include protected information.

6.7 Review

A review may not be necessary for all disclosures, however where a review occurs, those undertaking the review should not have been involved in the initial investigation.

Evaluation by ACT public sector entities

ACT public sector entities are encouraged to put in place procedures by which they will systematically review or otherwise evaluate their handling of disclosures with the aim of continuous improvement.

Oversight by the Commissioner

The Commissioner for Public Administration has a role in overseeing the action taken once a PID has been made, and will ensure all matters are handled consistently, fairly and properly.

This includes:

- reviewing a decision by an investigating entity to refuse to investigate a PID or to end an investigation; and
- any action taken, or proposed to be taken in relation to a PID.

7. Role of the Commissioner for Public Administration

Under section 17(b) of the Act, the Commissioner must be provided a copy of a PID from the disclosure officer once received.

7.1 Commissioner's functions

Under Part 6 of the Act, the Commissioner for Public Administration (Commissioner) is given a broad oversight role in relation to the ACT public sector's management of PIDs. The Commissioner is obliged to provide advice about PIDs to ACT public sector entities, review the way they investigate and deal with PIDs, ensure just outcomes for people who make PIDs including preventing and remedying the effect of detrimental action against people because of disclosures; and provide education and training about PIDs.

The Commissioner may notify the ACT Ombudsman about a PID if the Commissioner believes it is appropriate for the ACT Ombudsman to know about the disclosure.

7.2 Commissioner may review decisions

As oversight agency, the Commissioner for Public Administration has strong powers to compel ACT public sector entities to act in certain ways in their management of PIDs. Under section 29, the Commissioner has the power to review decisions made by ACT public sector entities in relation to disclosures and the way they are handled. Where an ACT public sector entity declines to investigate a disclosure the Commissioner may review and remake this decision. Likewise, the Commissioner

may review and remake decisions made by ACT public sector entities to end the investigation of a disclosure as well as any action taken by an ACT public sector entity in response to disclosable conduct being found.

The Commissioner may ask anyone to give the Commissioner information, including protected information, relevant to the investigation of the disclosure.

An ACT public sector entity or public official must comply with a request made to the entity or official.

Under section 29(4) of the Act, after review a decision, the Commissioner may:

- amend the decision; or
- set aside the decision and substitute a new decision; or
- take no action.

After reviewing an action, or proposed action, the Commissioner may direct an ACT public sector entity or public official to take action (or cease an action) in relation to the disclosable conduct.

7.3 Report by Commissioner

Under section 30 of the Act, the Commissioner may tell the Minister about an ACT public sector entity's PID procedures or how a PID is dealt with by an ACT public sector entity.

However, the principles of natural justice apply to these reports. Namely, the Commissioner must not include information that may be critical of a person unless the Commissioner has given the person an opportunity to be heard. Likewise, the Commissioner must not include information that is likely to endanger a person's safety or jeopardise an investigation relating to the disclosure.

Under section 30 (3), the Minister must present the report to the Legislative Assembly within nine sitting days after the day the report is given to the Minister.

7.4 Commissioner must keep discloser informed

The Commissioner is not immune to the requirement to keep the relevant parties informed about what is happening with a disclosure. If the Commissioner calls on the powers of review contained in Part 6 of the Act and substitutes or otherwise makes a decision about the way a disclosure is being handled or acted upon, the Commissioner must tell the discloser about the decision and what led to that conclusion (unless the disclosure was made anonymously or the discloser has otherwise made it clear that they do not wish to be kept informed).

Glossary

Act	<i>Public Interest Disclosure Act 2012</i>
ACT Public Service (ACTPS)	The ACT Public Service is established under section 12(1) of the <i>Public Sector Management Act 1994</i> . The ACTPS is made up of the administrative units declared under the Administrative Arrangements.
ACT public sector entity ¹⁰	means those performing a function on behalf of the ACT government using public funds ie. all government agencies and their staff or contractors <i>administrative units</i> (eg. Chief Ministers and Treasury Directorate, Justice and Community Safety Directorate, ACT Health, etc.), <i>territory authorities</i> (bodies established for a public purpose under an Act, eg. ACT Planning and Land Authority, Canberra Institute of Technology, Exhibition Park Corporation, ACT Insurance Authority, Teacher Quality Institute, Cemeteries Authority, etc), <i>territory-owned corporations</i> or their subsidiaries (corporations established under the <i>Territory-Owned Corporations Act 1990</i> eg. ACTTAB, ACTEW), <i>territory instrumentalities</i> (corporations established under the <i>Corporations Act</i> or another Act or statutory instrument whose majority of employees are public employees, eg. Board of Senior Secondary Studies), <i>statutory office holders</i> (eg. ACT Ombudsman, Auditor-General, Commissioner for Revenue, Director of Public Prosecutions, Registrar-General, Human Rights Commissioner, Public Trustee, Electoral Commissioner, Work Safety Commissioner, Conservator of Flora and Fauna etc.),or a member of, office of, or staff employed in the Legislative Assembly (eg. Chief Minister, Presiding Officer, the Clerk, Legislative Assembly Secretariat etc.).
Commissioner	Commissioner for Public Administration established under the <i>Public Sector Management Act 1994</i> .
Disclosure Officer	officer designated by respective head of ACT public sector entity to be a decision-maker in relation to PIDs
Detrimental action	discriminating against a person (including threats) by treating the person unfavourably in relation to reputation, career, profession, employment or trade; or harassing or intimidating a person; or injuring a person; or damaging a person's property.
Disclosable conduct	conduct that could amount to either a criminal offence or give grounds for disciplinary action, or activities that could amount to maladministration, misuse of public funds, or dangers to public health, safety or the environment. Includes: Theft of money; Theft of property; Bribes or kickbacks; Using official position to get personal services or favours; Giving unfair advantage to a contractor, consultant or supplier; Improper use of agency facilities or resources for private purposes; Rorting overtime or leave provisions; Making false or inflated claims for reimbursement; Failing to declare a financial interest in an agency venture; Intervening in a decision on behalf of a friend or relative; Improper involvement of a family business; Downloading pornography on a work computer; Being drunk or under the influence of illegal drugs at work; Sexual assault; Stalking (unwanted following or intrusion into personal life); Sexual harassment; Racial discrimination against a member of the public; Misuse of confidential information; Incompetent or negligent decision making; Failure to correct serious mistakes; Endangering public health or safety; Producing or using unsafe products; Acting against

¹⁰ Section 9(1) of the Act

	organisational policy, regulations or laws; Waste of work funds; Inadequate record keeping; Negligent purchases or leases; Covering up poor performance; Misleading or false reporting of agency activity; Covering up corruption; Hindering an official investigation; Unlawfully altering or destroying official records; Racial discrimination against a staff member; Allowing dangerous or harmful working conditions; Unfair dismissal; Failure to follow correct staff-selection procedures; Favouritism in selection or promotion; Bullying of staff; Reprisal against whistleblowers.
Discloser	a person who makes a PID by providing information about wrongdoing or suspected wrongdoing
Investigating entity	means the Head of an ACT public sector entity. Generally, the function of investigating a disclosure will be delegated, but it is important to recognise that ultimately, the head of an entity is responsible for the way a PID is handled.
Protected information	Information about a person that is disclosed to, or obtained by, a person to whom section 45 of the Act applies because of the exercise of a function under the Act by the person or someone else
Public Interest Disclosure (PID)	means a disclosure of information about disclosable conduct (wrongdoing or suspected wrongdoing in the public sector)
Receiving officer	means a person (eg. supervisor or manager) who receives a PID, but is not necessarily a Disclosure Officer Note that receiving officers are <i>not</i> decision makers in relation to PIDs
Senior Executives with Responsibility for Business Integrity and Risk (SERBIR)	a group of senior executives which meets quarterly tasked with upholding and managing risks to public sector integrity

References

Commonwealth Ombudsman [*Better practice guide to complaint handling*](#)

<<http://www.ombudsman.gov.au/pages/publications-and-media/better-practice-guides/complaint-handling.php>>

Australia and New Zealand School of Government

[*Good practice guide for managing internal reporting of wrongdoing in public sector organisations.*](#)

<http://epress.anu.edu.au/titles/australia-and-new-zealand-school-of-government-anzsog-2/whistling_citation>

Appendix A

Disclosure officer notification form - template for designating a disclosure officer

DISCLOSURE OFFICER DECLARATION

Under the Public Interest Disclosure Act 2012

**To be signed by the relevant head of the ACT public sector entity
(eg. Director-General, Director CIT, or other statutory office holder)**

ACT public sector entity:	
DISCLOSURE OFFICER	
Surname:	Given name:
Position Title: Level: Is this officer a member of the Senior Executives with Responsibility for Business Integrity and Risk (SERBIR)? Yes / No	
Email:	

Under the *Public Interest Disclosure Act 2012* (Act), I declare the above officer the Disclosure Officer for the <eg. *Chief Minister and Treasury Directorate*>.

I also delegate to the above named my power as investigating entity under section 18 of the Act.

The disclosure officer is responsible for:

- receiving, referring (if necessary) and tracking the course of disclosures;
- making decisions about disclosures;
- investigating disclosures on my behalf;
- ensuring appropriate action is taken on disclosures;
- supporting disclosers; and
- processing disclosures to conclusion.

Signed.....DATE.... /... /....

<Insert Name of head of ACT public sector entity eg. *Andrew Cappie Wood*>.....

Appendix B

Acknowledgement letter – suggested template for use on receipt of a disclosure

<INSERT LETTERHEAD>

Name

Address

Dear <name of discloser>

Thank you for your letter/email/phone call of <date> about <insert details of disclosure>.

I am writing to thank you for bringing this matter to my attention.

I am currently assessing whether it can be dealt with under the *Public Interest Disclosure Act 2012*.

Under the section 23(c) of the Act, I will notify you about how this matter is being handled within three months from the date of this letter.

If you require any further information or assistance, please do not hesitate to contact me.

Yours sincerely,

Name

Disclosure Officer

<name of ACT public sector entity>

CC Commissioner for Public Administration

CC <head of relevant ACT public sector entity>

Appendix C

Referral letter – suggested template for use in providing a disclosure to other ACT public sector entity

<INSERT LETTERHEAD>

Referral of a disclosure to another ACT public sector entity

Under section 19 of the *Public Interest Disclosure Act 2012*

<insert recipient/address>

Dear <insert head of entity>

On <insert date>, <insert name of entity that received the disclosure> received a disclosure from <insert name of discloser>. The disclosure was about <insert details of disclosure>. I have attached the disclosure for your information.

Under section 19 of the *Public Interest Disclosure Act 2012* (the Act) it is my opinion that this matter falls within the portfolio responsibilities of your entity as it involves staff in your entity <or> involves a program under your control <or> involves funds under your control <delete as appropriate>.

Under the Act, you should note that you have an obligation to keep the discloser, myself (as the referring entity) and the Commissioner for Public Administration informed about any actions or decisions you make about this matter at least once every three months or at significant points should you decide to investigate the matter.

Thank you for your consideration of this referral.

signed

<insert head of entity name - referring entity - date>

CC Commissioner for Public Administration

This section to be completed by the head of the ACT public sector entity to which the disclosure has been referred:

agree / not agree signed...../ /

Appendix D

Information to include in annual report

Under s45 of the *Public Interest Disclosure Act 2012* all ACT public sector entities with reporting responsibilities under the *Annual Reports (Government Agencies) Act 2004* are required to report on the public interest disclosures they deal with each year.

<INSERT NAME OF ENTITY>	<INSERT YEAR>	<INSERT YEAR>	<INSERT YEAR>
No. of PIDs made <u>directly</u> to the entity (that relate to the entity's conduct)			
No. of PIDs <u>referred</u> to the entity			
No. of investigations conducted			
No. of investigations complete			
Average time taken to complete investigation (in months)			

Directorates should include a statement in their annual report under the heading *Public Interest Disclosures* which captures the above information.

eg.

“The *Public Interest Disclosure Act 2012* provides the mechanism for people to report wrongdoing by ACT public sector entities, including their staff, contractors and volunteers.

The Directorate did not receive any public interest disclosures during the reporting period.”

or

“The *Public Interest Disclosure Act 2012* provides the mechanism for people to report wrongdoing by ACT public sector entities, including their staff, contractors and volunteers.

The Directorate received a number of public interest disclosures during the reporting period, as detailed in the table below.

<insert table>”