



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

OFFICE OF THE LEGISLATIVE ASSEMBLY

PUBLIC INTEREST DISCLOSURE PROCEDURES



AS AT JANUARY 2014

Approved

Clerk of the Legislative Assembly	Date
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Endorsed

Commissioner for Public Administration	Date
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1. ADOPTION OF PROCEDURES IN THE PUBLIC INTEREST DISCLOSURE GUIDELINES 2013

- 1.1 The [Public Interest Disclosure Act 2012](#) (the PID Act) enables anyone to report wrongdoing amounting to disclosable conduct in an ACT public sector entity including a Legislative Assembly entity.
- 1.2 This document outlines how the Office of the Legislative Assembly (OLA) manages public interest disclosures to meet its commitments under the PID Act and the Commissioner for Public Administration's [Public Interest Disclosure Guidelines](#).
- 1.3 Public interest disclosures are sometimes referred to as "whistleblowing" and relate to matters that are so serious they sit outside normal complaints handling or feedback processes.
- 1.4 Disclosable conduct includes activity of an ACT public sector entity or public official of a public sector entity that:
- is illegal;
 - misuses or wastes public money or resources;
 - is misconduct;
 - is maladministration;
 - presents a danger to the health or safety of the public; or
 - presents a danger to the environment.
- 1.5 A public interest disclosure may be made:
- orally or in writing; or
 - anonymously; or
 - without the discloser asserting that the information is provided under the PID Act.
- 1.6 The Clerk of the Legislative Assembly (the Clerk) is a disclosure officer under the PID Act for any public interest disclosure that relates to a Legislative Assembly entity.
- 1.7 Further, the Clerk has declared the Deputy Clerk and Serjeant-at-Arms to be a disclosure officer who can also undertake PID procedures as required under the PID Act.
- 1.8 The disclosure officers are responsible for:
- considering information received in order to determine whether it is a public interest disclosure; and
 - informing specified officers as declared in s17 of the PID Act about a public interest disclosure that has been made.

2. DETRIMENTAL ACTION

- 2.1 It is an offence under the PID Act to take detrimental action because of a public interest disclosure.
- 2.2 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; or
 - harrasing or intimidating a person; or
 - injuring a person; or
 - damaging a person's property.
- 2.3 A person who believes they have suffered detrimental action because of a public interest disclosure may refer the matter to the OLA disclosure officer. As a general rule, OLA will refer details of the alleged detrimental action to the Commissioner for Public Administration in accordance with Part 6 of the PID Act.

3. PUBLIC INTEREST DISCLOSURE PROCEDURES

- 3.1 The PID Act requires the disclosure officers to consider disclosures relating to Legislative Assembly entities.
- 3.2 Should a disclosure be made that the disclosure officer reasonably believes is more appropriately investigated by another public sector entity, that matter will be referred to an officer as defined in Part 4 of the PID Act.

PUBLIC INTEREST DISCLOSURES RELATING TO THE OFFICE OF THE LEGISLATIVE ASSEMBLY

- 3.3 A public interest disclosure relating to the OLA is to be assessed by the disclosure officer within three months.
- 3.4 The disclosure officer will make an initial assessment to ascertain whether the disclosure is a disclosure under the PID Act. In doing so, the disclosure officer will be guided by *Table 1 – Differentiating between a PID, complaints/grievances and performance management matters* of the [Public Interest Disclosure Guidelines](#). Following this assessment the disclosure officer must do one of the following:

- assess the public interest disclosure; or
- if the public interest disclosure relates to disclosable conduct of the Clerk, refer the disclosure to the Head of Service to investigate; or
- if the disclosure officer reasonably believes that the public interest disclosure is more appropriately investigated by a public sector entity that has a function or power to investigate, the disclosure may be referred to that entity; or
- decide not to investigate the public interest disclosure.

3.5 The disclosure officer may decide not to investigate a public interest disclosure under the following circumstances:

- the discloser has withdrawn the public interest disclosure and the disclosure officer is reasonably satisfied that there are no further matters in the disclosure that warrant investigation; or
- 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; or
- the disclosure officer is reasonably satisfied that the disclosed information is wrong in a material way and investigation of the disclosure is not warranted; or
- the disclosure officer is reasonably satisfied that the age of the disclosed information makes it impracticable for the disclosure to be investigated; or
- the disclosure officer is reasonably satisfied that the substance of the disclosure has already been investigated under the PID Act or another law in force in the ACT; or
- there is a more appropriate way reasonably available to deal with the disclosable conduct described in the disclosure.

3.6 Additionally, the disclosure officer may decide not to investigate a public interest disclosure if:

- the disclosure officer asks the discloser for assistance to investigate the disclosure; and
- the discloser fails, without reasonable excuse, to give the assistance; and
- the disclosure officer is reasonably satisfied that the lack of assistance makes it impracticable to investigate the disclosure.

3.7 The disclosure officer must inform the Commissioner for Public Administration of the decision to investigate a disclosure, and keep the Commissioner informed of the progress, action taken and outcome of the investigation.

3.8 The disclosure officer must refer the disclosure to the Chief Police Officer for the ACT if satisfied on reasonable grounds that the disclosable conduct that is the subject of the disclosure involves, or could involve, an offence.

3.9 Where the disclosure officer has referred a public interest disclosure relating to the OLA to the head of another entity, that investigating entity must keep the OLA informed of actions associated with the public interest disclosure. This includes:

- if the investigating entity decides not to investigate the disclosure, or to end the investigation

of the disclosure:

- the grounds for the decision; and
- the reasons for making the decision on each ground.
- if the investigating entity has decided to investigate the disclosure, the progress and outcome of the investigation.

3.10 The disclosure officer must tell the discloser about:

- the referral of the public interest disclosure to another head of a public sector entity for investigation;
- any decision not to investigate the public interest disclosure, or to end the investigation, including being advised of the:
 - ground(s) for the decision; and
 - reasons for making the decision on each ground;
- the progress of the investigation of the public interest disclosure at least once every three months;
- the outcome of the investigation; and
- the referral of the public interest disclosure to the Chief Police Officer for the ACT.

3.11 Exceptions to this requirement are if the discloser remains anonymous or has asked in writing not to be kept informed about actions taken in relation to the public interest disclosure.

3.12 The disclosure officer must take action if the disclosure officer believes, on reasonable grounds, that disclosable conduct has occurred, is likely to have occurred or is likely to occur. The action required is action necessary and reasonable to:

- prevent the disclosable conduct continuing or occurring in the future; and
- discipline any person responsible for the disclosable conduct.

PUBLIC INTEREST DISCLOSURES RELATING TO PUBLIC SECTOR ENTITIES (OTHER THAN THE OFFICE OF THE LEGISLATIVE ASSEMBLY)

3.13 A public interest disclosure relating to a public sector entity is to be investigated by the head of the entity to which the disclosure relates. However, there are exceptions.

3.14 If a public interest disclosure relating to a public sector entity other than the OLA is received by the disclosure officer, as soon as possible a copy of the disclosure must be given to:

- the head of the public sector entity to which the disclosure relates;
- the Commissioner for Public Administration; and
- for a disclosure that relates to an administrative unit - the Head of Service.

3.15 If the disclosure relates to the Head of Service, the disclosure officer must, as soon as possible, give a copy of the disclosure to the Ombudsman.

3.16 If the disclosure relates to the Auditor-General, the disclosure officers must, as soon as possible, give a copy of the disclosure to the Head of Service.

3.17 The disclosure officer need not give a copy of the public interest disclosure to a person mentioned in paragraph 2.14, if doing so is likely to adversely affect a person's safety or an investigation relating to the disclosure. However, this does not apply to paragraph 3.8 of the Procedures concerning the referral of a disclosure to the Chief Police Officer.

3.18 The OLA will liaise with the entity to which the disclosure relates on the conduct and outcome of the investigation, and will inform the Commissioner for Public Administration of that advice.

PUBLIC INTEREST DISCLOSURES RELATING TO MEMBERS OF THE LEGISLATIVE ASSEMBLY

3.19 The Legislative Assembly has appointed a Commissioner for Standards to investigate complaints about a Member's compliance with the Members' Code of Conduct. Members of the public may wish to consider having the matter raised with the Commissioner for Standards as an alternative to the PID process. Details about the Commissioner for Standards can be found at Continuing Resolution 5AA of the [Standing orders and continuing resolutions of the Assembly](#).

3.20 A public interest disclosure relating to a Member of the Legislative Assembly is to be assessed by the Clerk of the Legislative Assembly.

3.21 The Clerk must do one of the following:

- assess the public interest disclosure; or
- if the Clerk reasonably assesses that the public interest disclosure relates to a Member's compliance with the Members' Code of Conduct, the Clerk may refer the disclosure to the Speaker (or Deputy Speaker) who may refer the matter for investigation by the Commissioner for Standards appointed pursuant to Continuing Resolution 5AA of the Legislative Assembly; or
- if the Clerk reasonably believes that the public interest disclosure is more appropriately investigated by a public sector entity that has a function or power to investigate, the disclosure may be referred to that entity; or
- decide not to investigate the public interest disclosure.

3.22 The Clerk may decide not to investigate a public interest disclosure under the following circumstances:

- the discloser has withdrawn the public interest disclosure and the Clerk is reasonably satisfied that there are no further matters in the disclosure that warrant investigation; or
- the discloser has not provided their name and contact details and the Clerk is reasonably satisfied that the lack of information makes it impracticable to investigate the disclosure; or
- the Clerk is reasonably satisfied that the disclosed information is wrong in a material way and investigation of the disclosure is not warranted; or
- the Clerk is reasonably satisfied that the age of the disclosed information makes it impracticable for the disclosure to be investigated; or
- the Clerk is reasonably satisfied that the substance of the disclosure has already been investigated under the PID Act or another law in force in the ACT; or
- the Clerk is reasonably satisfied that an investigation would infringe the privileges of the Legislative Assembly; or
- there is a more appropriate way reasonably available to deal with the disclosable conduct described in the disclosure.

3.23 Additionally, the Clerk may decide not to investigate a public interest disclosure if:

- the Clerk asks the discloser for assistance to investigate the disclosure; and
- the discloser fails, without reasonable excuse, to give the assistance; and
- the Clerk is reasonably satisfied that the lack of assistance makes it impracticable to investigate the disclosure.

3.24 The Clerk must refer the disclosure to the Chief Police Officer for the ACT if satisfied on reasonable grounds that the disclosable conduct that is the subject of the disclosure involves, or could involve, an offence.

3.25 Where the Clerk has referred a public interest disclosure relating to a Member of the Legislative Assembly to another entity (other than the Speaker or Deputy Speaker), that investigating entity must keep the Clerk informed of actions associated with the public interest disclosure. This includes:

- if the investigating entity decides not to investigate the disclosure, or to end the investigation of the disclosure:
 - the grounds for the decision; and
 - the reasons for making the decision on each ground.
- if the investigating entity has decided to investigate the disclosure, the progress and outcome of the investigation.

3.26 The Clerk must tell the discloser about:

- the referral of the public interest disclosure to the Speaker (or Deputy Speaker) or another public sector entity for investigation;
- any decision not to investigate the public interest disclosure, or to end the investigation, including being advised of the:
 - ground(s) for the decision; and
 - reasons for making the decision on each ground;
- the progress of the investigation of the public interest disclosure at least once every three months;
- the outcome of the investigation; and
- the referral of the public interest disclosure to the Chief Police Officer for the ACT.

3.27 Exceptions to this requirement are if the discloser remains anonymous or has asked in writing not to be kept informed about actions taken in relation to the public interest disclosure.

3.28 The disclosure officer must take action if the disclosure officer believes, on reasonable grounds, that disclosable conduct has occurred, is likely to have occurred or is likely to occur. The action required is action necessary and reasonable to prevent the disclosable conduct continuing or occurring in the future.

4. CONFIDENTIALITY OF INFORMATION

4.1 The OLA will take appropriate steps to maintain the confidentiality of information concerning a public interest disclosure, including information about the identity of the person who has made a disclosure, or against whom a disclosure has been made.

4.2 All relevant documentation and files will be classified, stored and filed 'In-Confidence' in a locked filing cabinet. As a matter of practice, appropriate management of the information in a disclosure is an important way of limiting the possibility of detrimental action against a person making the disclosure.

5. INADVERTANT DISCLOSURES

5.1 A disclosure may be made without the discloser asserting that the disclosure is made under the PID Act. For example, a disclosure may be made inadvertently during a casual conversation without the person claiming that the information is provided as a disclosure.

5.2 Even though OLA staff may not be directly involved, nonetheless they may have inadvertently overheard or witnessed wrongdoing. In these instances, OLA staff should report these matters to a supervisor or a disclosure officer.

5.3 Staff to whom possible PIDs are reported are receiving officers under the PID Act.

5.4 Receiving officers are not responsible for making a decision on a PID. However, they must pass the information on to a disclosure officer.

6. DISCLOSURES MADE TO MLAS OR JOURNALISTS

6.1 In some circumstances PIDs may be made to Members of the Legislative Assembly (MLAs) or journalists. Protection under the PID Act for persons making disclosures to MLAs or journalists only apply when:

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

6.2 The PID Act also permits a disclosure to a third party such as an MLA or a journalist when he or she honestly believes that:

- he/she has information that tends to show disclosable conduct; and
- 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.

7. REPORTING

7.1 OLA will include in its annual report the:

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

8. GLOSSARY

Act	Public Interest Disclosure Act 2012
Clerk	The Clerk of the Legislative Assembly appointed under the Legislative Assembly (Office of the Legislative Assembly) Act 2012
Commissioner	The Commissioner for Public Administration established under the Public Sector Management Act 1994 .
Commissioner for Standards	The Commissioner for Standards appointed by the Legislative Assembly to investigate complaints against Members for alleged breaches of the Members' Code of Conduct, pursuant to Continuing Resolution 5AA of the Standing orders and continuing resolutions of the Assembly

Disclosure Officer	An officer designated by a head of an 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 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.
Legislative Assembly entity	For example, a member of, office of, or staff employed in the Legislative Assembly (eg. Speaker, the Clerk, Office of the Legislative Assembly, etc.).
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)
Public sector entity ¹	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

¹ Section 9(1) of the Act

	<p>Planning and Land Authority, Canberra Institute of Technology, Exhibition Park Corporation, ACT Insurance Authority, Teacher Quality Institute, Cemeteries Authority, etc),</p> <p><i>territory-owned corporations</i> or their subsidiaries (corporations established under the <i>Territory-Owned Corporations Act 1990</i> eg. ACTTAB, ACTEW),</p> <p><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),</p> <p><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</p>
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