



ACT
Government

Chief Minister, Treasury and
Economic Development

Public Interest Disclosures Procedures

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Revision

This Public Interest Disclosure Procedures must be reviewed and updated every two years or as required following major change to legislation, business operations and/or priorities as a part of Chief Minister, Treasury and Economic Development Directorate's business planning process.

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Review and authorisation

These Public Interest Disclosure Procedures are to be endorsed by the Director-General, Chief Minister, Treasury and Economic Development Directorate.

Kathy Leigh
Director-General
Chief Minister, Treasury and Economic
Development Directorate

Date

CONTENTS

Public Interest Disclosures Procedures.....	1
1. Introduction	3
2. What is a Public Interest Disclosure?.....	3
3. Who can make a Public Interest Disclosure?	4
4. Protection for people who make a disclosure.....	4
5. Who can a disclosure be made to?	5
6. What happens after a PID has been provided to the Disclosure Officer?.....	5
7. What to do if you receive a disclosure?	6
8. How should a disclosure be made?	6
8.1 Making a disclosure anonymously or in-confidence.....	7
8.2 Making a disclosure inadvertently	7
8.3 Making a disclosure externally.....	7
9. What happens if a disclosure is determined not to be a PID?.....	8
10. What is not a Public Interest Disclosure?.....	8
11. What happens if you think your disclosure is not handled properly?	9
Appendix 1	10
Procedures for Disclosure Officers.....	10
Appendix 2.....	12
Differentiating between a Public Interest Disclosure and other complaints/matters	12
Appendix 3.....	13
Other complaints handling mechanisms.....	13

1. Introduction

These Procedures cover Public Interest Disclosures relating to the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) and the entities below; they do not include disclosures made to the Public Sector Standards Commissioner. The Public Sector Standards Commissioner has published the [Public Interest Disclosures Guidelines](#) to explain and support the way in which the ACT Public Service and other public service entities covered by the [Public Interest Disclosure Act 2012](#) (the Act) should handle disclosures.

These Procedures apply to all business units of the Directorate, and to the following entities:

- ACT Insurance Authority.
- ACT Compulsory Third-Party Insurance Regulator.
- Commissioner for ACT Revenue.
- Default Insurance Fund.
- Director of Territory Records.
- Lifetime Care and Support Commissioner.
- Registrar General.
- Work Safety Commissioner.
- Environment Protection Authority.
- Commissioner for Fair Trading.
- ACT Construction Occupations Registrar.
- Chief Inspector Scaffolding and Lifts.
- Clinical Waste Controller.
- Registrar, ACT Architects.

For ease of reading all references to 'CMTEDD' and 'the Directorate' in these Procedures are to be read as including the above entities.

The Act came into effect on 1 February 2013 and replaced the *Public Interest Disclosure Act 1994*.

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 Public Interest Disclosure (the discloser), the protections available for disclosers, how disclosures should be dealt with, and the obligations of staff who manage disclosures.

2. What is a Public Interest Disclosure?

Sometimes matters are so serious that they sit outside the normal complaint or feedback system. Certain disclosures trigger a special framework put in place to handle these kinds of serious or systemic concerns. This scheme takes these matters out of the regular complaint handling process and places them in a category called a 'Public Interest Disclosure' (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 it is in the interest of the public to resolve.

Disclosable conduct includes activity by an ACT Public Sector employee or entity that:

- is illegal;
- is a substantial misuse or waste of public money or resources;
- is misconduct;
- is maladministration that adversely affects a person's interest in a substantial or specific way;
- presents a substantial and specific danger to the health or safety of the public; or
- presents a substantial and specific danger to the environment.

A PID can be about the actions of an instrumentality, officer, employee, contractor or anyone else who exercises a function on behalf of the Government, including Ministers and Members of the Legislative Assembly.

A PID may relate to events which are happening now, in the past, or that may happen in the future.

3. Who can make a Public Interest 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.

A person may make a PID even if they are not able to identify a particular person who is responsible for the activity.

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

4. 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 result 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. 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 is not provided to people who knowingly make false claims.

5. Who can a disclosure be made to?

Disclosures relating to CMTEDD should be made to one of CMTEDD's Disclosure Officers (DOs):

Executive Director, Corporate

Ms Sue Hall

Ph: +61 2 6207 0569

sue.hall@act.gov.au

GPO Box 158, Canberra City ACT 2601

Director, Corporate Management

Ms Kirsten Thompson

Ph: +61 2 6207 8207

kirsten.thompson@act.gov.au

GPO Box 158, Canberra City ACT 2601

The DO's have been given special responsibility and training in dealing with complaints and Public Interest Disclosures.

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

- For matters that relate to the ACTPS, a disclosure can be made to the Director-General CMTEDD or the Head of Service.
- For employees of the ACTPS, a disclosure can be made to your supervisor or manager (see section 7, 'what to do if you receive a disclosure?').
- For disclosures relating to the Head of Service, the ACT Ombudsman should be contacted.
- For matters that relate to the Legislative Assembly, a disclosure can be made to the Clerk of the Legislative Assembly.
- If there is a governing board, a disclosure can be made to a board member.
- Disclosures can also be made to the Public Sector Standards Commissioner, the ACT Auditor-General of the ACT Ombudsman.

6. What happens after a PID has been provided to the Disclosure Officer?

The role of the DO is to receive disclosures; make an initial assessment; manage the investigation process, if warranted; make recommendations based on the outcome of any investigation; and report on the outcome and reasons.

- If the disclosure has been assessed as being a PID, the DO will notify the Director-General and the Public Sector Standards Commissioner that a disclosure has been made under the PID Act. The DO will further determine whether an investigation is required and how it should be conducted.

- DOs will assess the disclosure and consider whether it would be better handled by another entity or if it relates to another entity's staff or resources.

The DO is responsible for supporting the discloser through the process and keeping them informed of what actions are taken in response to the disclosure, including final decisions and action taken.

The table at *Appendix 1* outlines the steps to be undertaken by a DO following receipt of a disclosure through to the completion of the process.

7. What to do if you receive a disclosure?

You could receive a disclosure if:

- you are an ACTPS employee with responsibility for supervising staff; or
- you are the member of a governing board of an entity; or
- 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; Respect, Equity and Diversity Contact Officer; or member of an audit committee.

If you are not the DO and you receive a disclosure, you are known as the Receiving Officer. The Receiving Officer should thank the discloser for coming forward and let them know that they are not the DO, but that you will provide the disclosure to the DO as soon as possible.

The Receiving Officer should inform the DO of the disclosure as soon as possible. The Receiving Officer should not attempt to investigate the matter or tell others about the disclosure as this might put the discloser or any subsequent investigation at risk.

If the matter is raised orally, the Receiving Officer should:

- make a written note including details of the discloser and any individuals implicated in the matter; and
- inform the discloser that they will probably be asked to check, sign and date the record.

8. How should a disclosure be made?

A disclosure can be made in any 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.

Where a disclosure is made in person or over the phone, the receiver will make a written record of the conversation.

While a discloser is not required to satisfy a legal level of proof, the discloser should have good reasons or evidence for their suspicions.

8.1 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).

In weighing the veracity of any anonymous complaint, DOs will have regard to the extent to which the disclosure made can be independently verified. If enough information is provided, the report 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.

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.

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

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

8.2 Making a disclosure inadvertently

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

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.

Staff not directly involved in the discussion or actions, may nonetheless witness wrongdoing, and are strongly encouraged to report these matters to a supervisor or DO.

8.3 Making a disclosure externally

Usually, disclosures should be reported to the DO in the relevant ACT public sector entity in the first instance.

A discloser may make a disclosure to a third party, specifically to a journalist or a Member of the ACT Legislative Assembly, under the following circumstances:

- 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.

Disclosures made in this way, under these specific circumstances, will be provided with protections under the Act. Where CMTEDD fails in its duty to manage a disclosure according to the process outlined in these Procedures, 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.

If you believe the conduct involves many people or is so deeply embedded in the culture of CMTEDD and for this reason making an internal disclosure is unlikely to be taken seriously or may be detrimental to your health or wellbeing, you should inform the Public Sector Standards Commissioner, the ACT Auditor-General or the ACT Ombudsman.

9. What happens if a disclosure is determined not to be a PID?

Sometimes it may be determined that the concerns raised are not serious or substantial 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 Directorate's DO will inform the discloser and give reasons for the decision. The DO will inform the discloser of their rights and provide information about how to seek a review.

10. What is not a Public Interest Disclosure?

Disclosures relating to the following matters are unlikely to be a PID:

- matters that affect only personal or private interests of an individual;
- complaints relating to individual employment and industrial matters;
- isolated allegations of bullying or harassment;
- personnel matters;
- a disagreement in relation to a policy about amounts, purposes or priorities of public expenditure;
- individual performance management concerns; or
- individual workplace health or safety concerns.

These 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 contact the Executive Director, Corporate, or the Manager, Governance, by phone or in writing, such as by email.

Executive Director, Corporate

Sue Hall

Ph: +61 2 6207 0569

sue.hall@act.gov.au

Manager, Governance, Corporate Management

Chris Cole

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Information to assist in differentiating between a PID and other complaints/matters is at *Appendix 2*. Information on other complaints handling mechanisms is at *Appendix 3*.

11. What happens if you think your disclosure is not handled properly?

All decisions made under the Act are subject to review. The DO will inform the discloser of their rights and provide information about how to seek a review. This will include how to seek clarification from the DO (an internal review), or a formal review by the Public Sector Standards Commissioner.

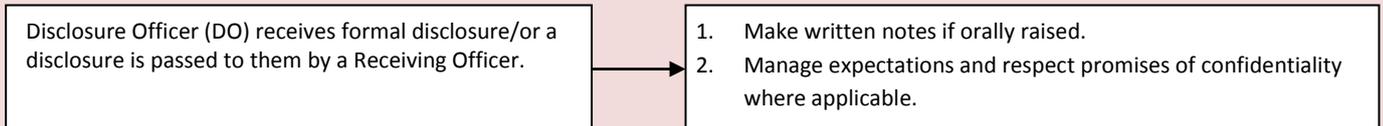
The DOs are responsible for making clear to a discloser how their disclosure was handled and any steps taken to address their concerns. If a discloser is dissatisfied with the outcome of an investigation, the Public Sector Standards Commissioner is able to review an investigation or any aspect of the handling of a disclosure.

The ACT 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 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.

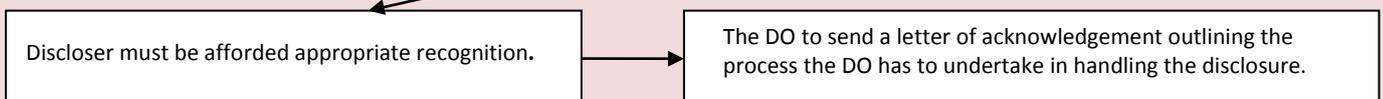
Appendix 1

Procedures for Disclosure Officers

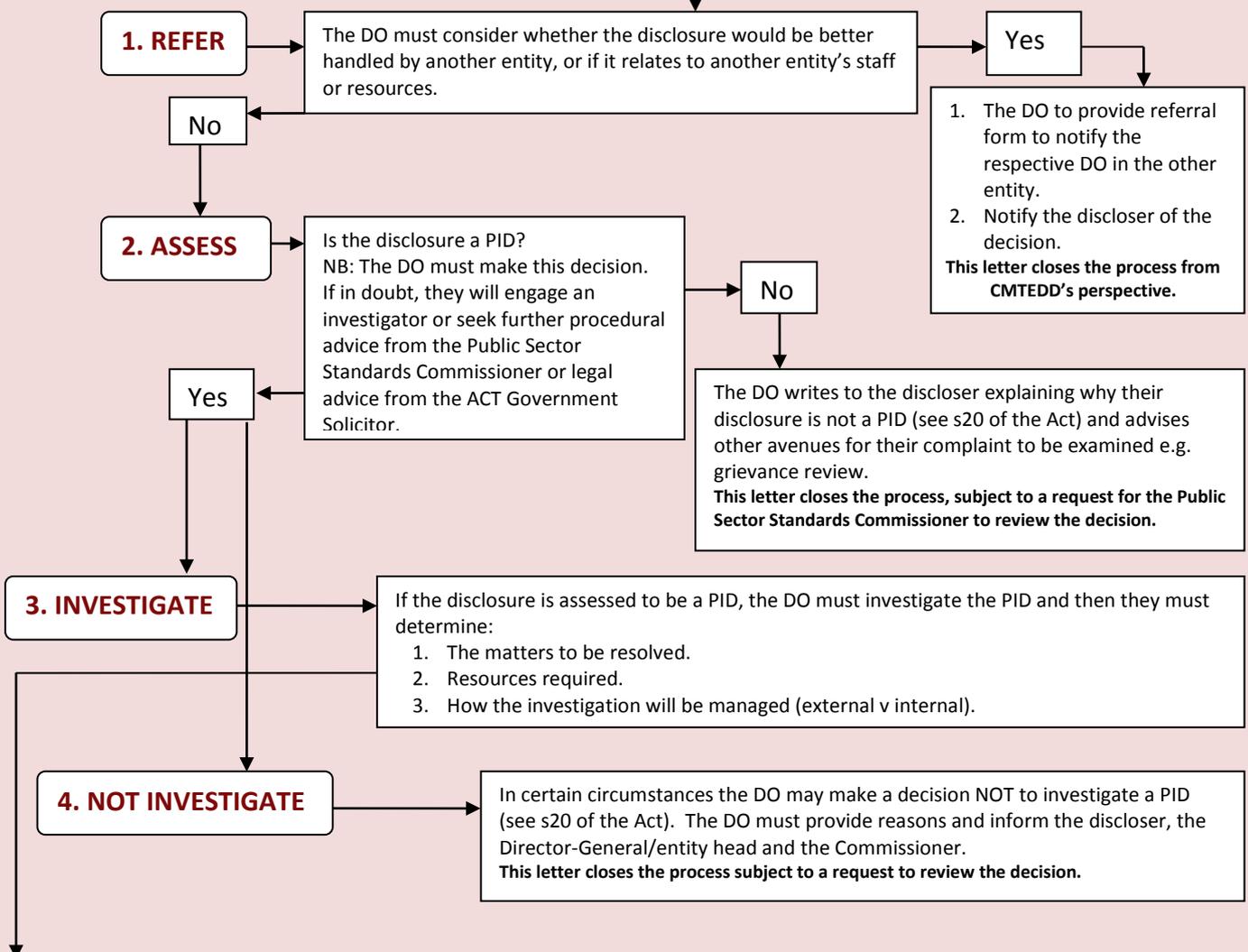
Step 1: RECEIVE



Step 2: ACKNOWLEDGE



Step 3: INITIAL ASSESSMENT – 5 STEPS TO ASSESSMENT



5. MANAGE THE PROCESS

The DO has the responsibility to track and manage the process from problem to solution, and notify as required.

Step 4: INVESTIGATION

The DO makes the decision that the matter is complex or an investigation is otherwise needed.

The DO develops clear and relevant Terms of Reference for investigation:

1. Who is involved?
2. When did it happen?
3. Has disclosable conduct occurred?
4. What type of conduct?
5. What can be done to remedy the wrong
6. What can be done to ensure it doesn't happen again
7. Timeframes

Undertake investigation – internal or external.

The DO documents recommendations from the outcome of the investigation.

The discloser and Commissioner must be updated at least once every three months.

Step 5: FINAL DECISION

The Director-General/entity head makes the final decision(s) based on the recommendations arising from investigation.

Following the decision, the DO must prepare a report about the PID, including general information about the complaint; what happened in response; and the decision and reasons for making it.

The Directorate must take action to:

1. Prevent the disclosable conduct continuing.
2. Discipline any person responsible for the disclosable conduct (s24)

Following completion of the process, the discloser, Commissioner and Director-General/entity head must be informed:

1. of the outcome of any investigation, or
2. if it is decided that the investigation will be ended, the reason for this decision and how this complies with s20 of the Act.

Step 6: REPORT

Relevant information is compiled for the Directorate's Annual Report.

Step 7: REVIEW (if necessary)

The Commissioner can:

1. review any action taken or proposed to be taken in relation to a PID; and
2. may review the decision by an investigating entity to refuse to investigate a PID or to end an investigation.

Appendix 2

Differentiating between a Public Interest Disclosure and other complaints/matters

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

Appendix 3

Other complaints handling mechanisms

Area	Further information is available from:
ACT Civil and Administrative Appeals Tribunal For reviews of reviewable decisions made under certain legislation	Ph: (02) 6207 1740 ACT Civil and Administrative Appeals Tribunal
ACT Human Rights Commission For complaints relating to children and young people, disability and community services, health services and human rights and discrimination	Ph: (02) 6205 2222 ACT Human Rights Commission
ACT Ombudsman For complaints about the Directorate's administrative actions and decisions	Ph: 1300 362 072 ACT Ombudsman
Fair Work Commission In respect of dispute resolution of provisions in the Enterprise Agreement and Unfair Dismissal	Ph:1300 799 675 Fair Work Commission
Fair Work Ombudsman For complaints about contraventions of workplace laws, including enterprise agreements	Ph: 13 13 94 Fair Work Ombudsman
Human Rights and Equal Opportunity Commission For complaints of discrimination and breaches of human rights	Ph: 1300 656 419 Human Rights and Equal Opportunity Commission
Office of the Australian Information Commissioner For complaints about breaches of privacy	Ph: 1300 363 992 Office of the Australian Information Commissioner