

PUBLIC INTEREST DISCLOSURE FACT SHEET 2017

PURPOSE

The purpose of this fact sheet is to highlight key provisions and processes set out in the *Public Interest Disclosure Act 2012*.

WHAT IS A PUBLIC INTEREST DISCLOSURE (PID)

In the ACT, a disclosure or complaint to an official becomes a PID when it is about conduct that could amount to a criminal offence, give grounds for disciplinary action or activities that could amount to a serious malfeasance of public office or danger to public health, safety or the environment. It is colloquially known as 'whistle blowing'.

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.

A PID can be about the actions of permanent, temporary or casual staff and employees of the ACTPS and other entities, including a member of the ACT 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.

WHAT IS NOT 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 be considered to be PIDs.

WHO CAN MAKE A PID

Under ACT legislation, *any person* suspecting a misuse of public resources or with information that indicates questionable activity relating to the work of an entity can make a disclosure. This includes ACTPS employees, contractors and others who work with entities, and members of the public.

A disclosure may be made orally or in writing. There is no prescribed form.

A PID can be made *anonymously*. However, the chance of an outcome is more likely where the identity of a discloser is known. In some circumstances a discloser's identity may be

required by law, for example for a witness of an assault in a workplace. Under Section 21 of the Act, an entity must refer a disclosure to the chief police officer if satisfied on reasonable grounds that the subject of the disclosure involves, or could involve a criminal offence.

WHO CAN RECEIVE A PID

Every entity has at least one disclosure officer who has been given special responsibility and training in dealing with disclosures and PIDs. In the Directorates, this is the Senior Executive Responsible for Business Integrity and Risk (SERBIR).

- For employees of the ACTPS, a disclosure can be made to supervisors, managers, 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 Public Sector Standards Commissioner (the Commissioner), the ACT Auditor-General, or the ACT Ombudsman.

PROTECTION FOR DISCLOSERS

Under the Act, a person who acts honestly and reasonably in making a disclosure receives protection from reprisal as a direct result from that disclosure.

If a person takes retaliatory action against the discloser by directly or indirectly punishing them for reporting information, there can be serious consequences for their behaviour. Under Section 40 of the Act the person who takes detrimental or retaliatory action commits an offence.

PROCESS

Once the disclosure officer has received a disclosure the process begins. The disclosure officer should first acknowledge receipt for the disclosure. *It is then the disclosure officer's responsibility to manage the process from beginning to end and notify relevant persons.*

Under the Act, the disclosure officer must notify the discloser within three months after the day the disclosure is made, as to whether or not the disclosure will be investigated or dealt with.

The disclosure officer will assess whether the disclosure should be referred to another entity for consideration.

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 the ACT Government Solicitor or from an investigating entity.

If the disclosure officer has assessed the disclosure as being a PID, the discloser will be notified of who will be handling the matter, how they can be contacted and what further assistance may be required.

If the disclosure officer has assessed that the disclosure is being a PID, the disclosure officer will then decide whether their entity should conduct the investigation internally or oversee an external investigation.

Once the disclosure officer has notified the discloser that an investigation will be undertaken, they must update the discloser about the progress of the investigation every three months. *(The discloser does not have to be kept informed where this is likely to bring risk to a person's safety or compromise the investigative process relating to the PID.)*

In certain circumstances, the investigating entity may make a decision not to investigate the PID for various reasons listed under Section 20 of the Act. This would end the process.

Once a decision is made based on the recommendations of the investigation report, the entity must inform the discloser:

- of the outcome of the investigation; or
- that an investigation will not be conducted, the reason for this decision and how this complies with Section 20 of the Act.
- provide a report to the Commissioner.

A disclosure assessed as not being a PID may still be investigated in accordance with the PSM Act and Enterprise Agreement as appropriate.

PUBLIC SECTOR STANDARDS COMMISSIONER FUNCTIONS

Under Part 6 of the Act, the Commissioner is given an oversight role in relation to the ACT public sector's management of PIDs. The Commissioner is obliged to provide advice about PIDs to 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.

Under section 28 of the Act, the Commissioner has a specific role in overseeing the action taken once a PID has been made, and will ensure all matters are handled 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.

The Commissioner's office maintains a data base in relation to PIDs across the Whole of Government.

OTHER RESPONSIBILITIES

Under Section 33 of the Act, entities are required to prepare and publish procedures about how they intend to deal with disclosures and those procedures must be approved by the Commissioner.

FURTHER INFORMATION

More comprehensive information regarding PID arrangements and the coordination and handling of disclosures are provided in the Public Interest Disclosures Guidelines 2017 which are available on the ACT Legislation Register.

LEGISLATIVE REFERENCE

Public Interest Disclosure Act 2012



Bronwen Overton-Clarke
Public Sector Standards Commissioner
Workforce Capability and Governance Division
Chief Minister Treasury and Economic Development Division

June 2017