



Housing Australia

PUBLIC INTEREST DISCLOSURE PROCEDURES

September 2018

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DOCUMENT PURPOSE

The purpose of this document is to set out the detailed processes of Housing Australia to be followed by its supervisors, authorised officers, principal officer and investigation delegates in reporting, investigating and responding to disclosures made under the *Public Interest Disclosure Act 2013* (Cth) (PID Act).

1. SCOPE

These procedures set out the detailed processes established by Housing Australia's principal officer to be followed by its supervisors, authorised officers, principal officer and investigation delegates in reporting, investigating and responding to disclosures made by Housing Australia's public officials under the PID Act. They should be read in conjunction with Housing Australia's Public Interest Disclosure ("Whistleblower") Policy which sets out:

- a) who can make a public interest disclosure;
- b) what can be reported;
- c) how a public interest disclosure can be made; and
- d) Housing Australia's policy on how a public interest disclosure will be investigated.

2. DEFINITIONS

authorised officer means the principal officer and any other public official within Housing Australia appointed in writing by the principal officer as an authorised officer for the purposes of the PID Act.

disclosable conduct has the meaning given in s 29 of the PID Act, which in summary is conduct engaged in by an agency, a public official (in connection with their position as a public official), or a contracted service provider (in connection with entering into or giving effect to a Commonwealth contract) that:

- contravenes a law of the Commonwealth, a State or a Territory;
- occurs in a foreign country and contravenes a law in that country that applies to the agency or public official and that corresponds to a law in force in the Australian Capital Territory;
- is corrupt;
- perverts, or attempts to pervert, the course of justice;
- results in wastage of relevant money or relevant property (within the meaning of the *Public Governance, Performance and Accountability Act 2013* (Cth)) or money or property of a prescribed authority such as Housing Australia;
- is an abuse of public trust;
- constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent;
- is fabrication, falsification, plagiarism or deception in relation to scientific research, or misconduct in relation to scientific work;
- unreasonably results in a danger to the health and safety of a person or unreasonably results in or increases the risk of a danger to the health and safety of a person;

- results in, or increases the risk of, a danger to the environment;
- is prescribed by the rules made under s 83 of the PID Act; or
- is engaged in by a public official that involves abuse of the public official's position, or could, if proved, give reasonable grounds for disciplinary action against the public official,

but excludes disagreeing with government policy, action or expenditure or judicial conduct and the proper conduct of intelligence activities.

discloser means an individual who discloses information.

disclosure means information disclosed by a discloser.

PID Act means the *Public Interest Disclosure Act 2013* (Cth).

principal officer means the Chief Executive Officer of Housing Australia or a public official of Housing Australia that the Chief Executive Officer delegates any or all of his or her functions or powers under the PID Act, as appointed from time to time.

public official has the meaning given in s 69 of the PID Act and, in the context of Housing Australia, means:

- the principal officer;
- a member of the staff of Housing Australia;
- an individual who is employed by the Commonwealth (otherwise than as an APS employee) and performs duties for Housing Australia;
- a member of the Board of Housing Australia; or
- an officer or employee of an individual or an entity who is a contracted service provider providing goods or services to Housing Australia under a contract with Housing Australia.

public interest disclosure means a disclosure made by a discloser (who is or was a public official) to an authorised officer or a supervisor of the discloser, of information which tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct.

supervisor, in relation to a discloser, is a staff member of Housing Australia who supervises the discloser in some capacity, for example, their immediate supervisor, joint supervisor, supervisor's supervisor or a team leader.

3. PUBLIC INTEREST DISCLOSURES

3.1 WHO CAN MAKE A PUBLIC INTEREST DISCLOSURE

A current or former “public official” can make a public interest disclosure and such a disclosure can be made openly or anonymously.

3.2 WHAT CAN BE REPORTED

A current or former public official can disclose information that tends to show, or they believe on reasonable grounds tends to show, “disclosable conduct”.

3.3 HOW A PUBLIC INTEREST DISCLOSURE CAN BE MADE

There are 4 types of public interest disclosures under the PID Act: internal disclosures to Housing Australia, disclosures to other parties external to Housing Australia, emergency disclosures and legal practitioner disclosures. Further details in relation to each type of disclosure is contained in Housing Australia’s Public Interest Disclosure (“Whistleblower”) Policy.

These procedures primarily set out the detailed processes developed by Housing Australia to be followed by its supervisors, authorised officers, its principal officer and investigation delegates in reporting, investigating and responding to internal disclosures made by Housing Australia’s public officials under the PID Act.

Internal disclosures can be made by a current or former public official to their supervisor (for current employees), the Chief Executive Officer or to any other authorised officer.

The disclosure can be made openly or anonymously and orally or in writing.

The current or former public official does not have to state or intend that they are making a public interest disclosure under the PID Act. If a disclosure is made by a public official of disclosable conduct to their supervisor (for current employees), the Chief Executive Officer or to any other authorised officer then it will constitute a disclosure under the PID Act.

Once a disclosure has been made, it cannot be withdrawn. However, one of the grounds on which a decision may be made by the principal officer not to investigate a disclosure is if the discloser has informed their supervisor (for current employees) or an authorised officer that they do not wish the disclosure to be pursued and the principal officer is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation.

4. PROCEDURES FOR SUPERVISORS

If a current Housing Australia employee approaches a person as their supervisor to make a disclosure, and the person is not the employee's supervisor, or there is uncertainty as to whether they supervise the employee, the person should advise the employee to make their disclosure to an authorised officer.

If a current Housing Australia employee discloses information to their supervisor and that supervisor has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the supervisor must, as soon as reasonably practicable, give the information to an authorised officer. This requirement also applies to anonymous disclosures.

The supervisor must make a written record of the fact of the disclosure, and if the disclosure is not in writing, they must make a written record of the substance of the disclosure and of the time and date of the disclosure. The discloser should be asked to sign the record of the disclosure where this is practicable. The written record must be passed to the authorised officer.

The supervisor must also give the authorised officer, as soon as possible after the disclosure is made, their written assessment of the risk, if any, that reprisal action might be taken against the discloser. The assessment can also include the risk of related workplace difficulties.

A risk assessment should consider the likelihood of reprisals or workplace difficulties occurring. Guidance on how to conduct a risk assessment is provided at paragraph 5.4 below and Schedule 1 and a list of possible indicators of a higher risk of reprisals or workplace conflict that might be relevant to the disclosure and the discloser's circumstances are set out at Schedule 2.

Unless the disclosure is anonymous, the supervisor must advise the discloser when they have given the information to an authorised officer and provide the name and contact details of the authorised officer.

5. PROCEDURES FOR AUTHORISED OFFICERS

The primary responsibility of an authorised officer is to allocate to one or more agencies the handling of disclosures made directly to them or referred to them by a supervisor.

The authorised officer must use their best endeavours to decide on the allocation of the disclosure within 14 days of their receiving the disclosure.

5.1 ADVICE TO DISCLOSERS AND POTENTIAL DISCLOSERS

If a current or former Housing Australia public official discloses or proposes to disclose information to an authorised officer, and the authorised officer has reasonable grounds to believe that:

- the information concerns or could concern disclosable conduct; and

- the person may be unaware of what the PID Act requires for the disclosure to be an internal disclosure,

the authorised officer must:

- inform the person that the disclosure could be treated as an internal disclosure;
- explain what the Act requires in order for the disclosure to be an internal disclosure;
- explain the protections provided by the PID Act to persons who make disclosures under the Act; and
- advise the person of any relevant restrictions on the disclosure of the information.

5.2 RECEIVING A DISCLOSURE

If the disclosure is made directly to them, the authorised officer must make a written record of the disclosure, and if it is not in writing, they must make a written record of the substance, including the time and date, of the disclosure. The discloser should be asked to sign the record of the disclosure where this is practicable.

Where the disclosure is referred to them by a supervisor, the authorised officer must ensure that the supervisor provides them with a written record of the disclosure.

If the authorised officer is aware of the name and the contact details of the discloser, they must, as soon as practicable after receiving the disclosure and before allocating the disclosure, ask the discloser whether they:

- consent to the authorised officer giving the discloser's name and contact details to the principal officer and to the principal officer's delegates; and
- wish their disclosure to be investigated - expressing a wish not to have a disclosure investigated does not necessarily mean that the disclosure will not be investigated. One of the grounds on which an investigation delegate may decide not to investigate a disclosure, is if the discloser has informed the delegate that they do not wish the disclosure to be pursued and the delegate is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation.

The authorised officer must make a written record of the discloser's responses (if any) to these questions.

If a discloser does not respond within seven days to the question referred to:

- in the first dot point – the discloser is taken not to have consented to their name and contact details being given to the principal officer and their delegates; and
- in the second dot point – the discloser is taken to wish the disclosure to be investigated.

An example of an email requesting this information is at Schedule 3.

The authorised officer must also advise the discloser that if they do give such consent and the disclosure is allocated to Housing Australia, the authorised officer will be required to give the discloser's name and contact details to the Commonwealth Ombudsman as part of the authorised officer's obligation under s 44(1A) of the PID Act to inform the Commonwealth Ombudsman of any allocation of a disclosure.

The authorised officer must advise the principal officer as soon as practical that they have received a disclosure with a Form 2, as provided at Schedule 4.

If the discloser does not consent to their name and contact details being given to the principal officer and their delegates, the authorised officer's advice to the principal officer must be anonymised to the extent possible to avoid the discloser's name being able to be ascertained from the information provided to the principal officer.

5.3 DECISION WHETHER OR NOT TO ALLOCATE A DISCLOSURE

An authorised officer who receives a disclosure is not required to allocate the handling of a disclosure to an agency if they are satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered to be an 'internal disclosure' as defined in the PID Act.

The bases on which the authorised officer could be satisfied of this include that:

- the disclosure has not been made by a person who is, or was, a public official;
- the disclosure was not made to an authorised officer or supervisor;
- the disclosure is not about disclosable conduct;
- the person who is alleged to have carried out the disclosable conduct was not a public official at the time they are alleged to have carried out that conduct; or
- the disclosure is not otherwise a public interest disclosure within the meaning of the PID Act.

The authorised officer may obtain information and may make such inquiries as they think fit for the purposes of determining whether the disclosure is an internal disclosure or not, and if it is, for deciding its appropriate allocation.

- If the disclosure is anonymous, it may not be clear whether the discloser is or was a public official. In these circumstances, the authorised officer must consider whether to exercise their power in s 70 of the PID Act to determine that a person who has disclosed information to them is a public official in relation to the making of the disclosure.
- If the authorised officer does not determine that the discloser is a public official, the disclosure is not an internal disclosure under the PID Act and therefore cannot be allocated.

Decision not to allocate

If an authorised officer decides not to allocate a disclosure that has been made to them (on the basis that they have reached the view that the report could not be reasonably considered to be an internal disclosure under the PID Act), they must - where the discloser's contact details are known to the authorised officer – advise the discloser in writing that the disclosure is not to be allocated, by sending them a completed Form 1, as provided at Schedule 4.

- If the discloser has consented to their name and contact details being given to the principal officer and the principal officer's delegates, the authorised officer must send a copy of the Form 1 to the principal officer.
- If the discloser has not consented to their name and contact details being given to the principal officer and the principal officer's delegates, the authorised officer must advise the principal officer of their decision not to allocate the disclosure while avoiding the discloser's name being able to be ascertained from the advice provided to the principal officer.

Decision to allocate to Housing Australia

If the authorised officer decides that the disclosure should be allocated to Housing Australia, they must complete Form 2, as provided at Schedule 4, and send it to the principal officer. On receipt of a completed Form 2 relating to an internal disclosure, the principal officer will determine which investigation delegate will undertake the investigation of the disclosure.

If the discloser has not consented to their name and contact details being given to the principal officer and their delegates, the authorised officer must ensure that the completed Form 2 is anonymised to the extent possible to avoid the discloser's name being able to be ascertained from the information provided in the form.

The authorised officer must also complete the Notification of Allocation form available at <http://www.ombudsman.gov.au/about/making-a-disclosure/pid-resources> and send it the Commonwealth Ombudsman's Office.

If the authorised officer is aware of the discloser's contact details, they must inform the discloser of the allocation using Form 3, as provided at Schedule 4.

Decision to allocate to another agency

If the authorised officer decides that the disclosure should be allocated to an agency other than Housing Australia, they must obtain the consent of an authorised officer in the other agency before allocating the disclosure to that agency.

In considering allocating the disclosure to another agency, the authorised officer must have regard to the principle that an agency should not handle a disclosure unless some or all of the disclosable conduct with which the information is concerned relates to the agency.

Before approaching the other agency, Housing Australia's authorised officer must advise the discloser that they are considering allocating the disclosure to another agency and ask the discloser whether they consent to Housing Australia's authorised officer giving the discloser's name and contact details

to the other agency's authorised officer, principal officer or delegate nominated by the principal officer.

The authorised officer must make a written record of the discloser's response. If the discloser does not respond within 7 days the discloser is taken not to have given consent.

If the authorised officer of the other agency consents to the disclosure being allocated by Housing Australia to that agency, Housing Australia's authorised officer must complete Form 2, as provided at Schedule 4, and send it to the principal officer of the other agency or the delegate nominated by the principal officer.

If the discloser has not consented to their name and contact details being given to the other agency's authorised officer, principal officer or delegate nominated by the principal officer, the authorised officer must ensure that the completed Form 2 is anonymised to the extent possible to avoid the discloser's name being able to be ascertained from the information provided in the form.

The authorised officer must also copy the completed Form 2 to Housing Australia's principal officer of the decision to allocate and complete the Notification of Allocation form available at <http://www.ombudsman.gov.au/about/making-a-disclosure/pid-resources> and send it the Commonwealth Ombudsman's Office.

If the disclosure is allocated to an intelligence agency, Form 2 must be sent to the Inspector General of Intelligence and Security not the Commonwealth Ombudsman.

If the authorised officer is aware of the discloser's contact details, they must inform the discloser of the allocation using Form 3, as provided at Schedule 4.

Where the authorised officer of the other agency consents to the disclosure being allocated by Housing Australia and the disclosure is accordingly allocated, the management of the disclosure becomes the responsibility of the authorised officer and principal officer of that agency.

If the authorised officer of the other agency does not consent to the disclosure being allocated by Housing Australia to that agency, the authorised officer is to consult the principal officer on how the disclosure is to be allocated.

5.4 RISK ASSESSMENT - REPRISALS

If a disclosure is made directly to the authorised officer, the authorised officer must prepare a written assessment of the risk, if any, that reprisal action might be taken against the discloser. The assessment can also include the risk of related workplace difficulties.

- A risk assessment should consider the likelihood of reprisals or workplace difficulties occurring.
- If the authorised officer considers that there is a reasonable likelihood of reprisals or workplace difficulties, the assessment should also include the potential consequences if they do occur – both the discloser's immediate and long term well-being and the cost to the agency.
- In conducting the risk assessment, the discloser should be consulted on the potential risks that they perceive arising from the disclosure. The discloser's supervisor should also be consulted provided the supervisor is not involved in the alleged wrongdoing.

- Guidance on how to conduct a risk assessment is provided at Schedule 1.
- The *Agency Guide to the Public Interest Disclosure Act 2013*, which can be found on the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au/about/making-a-disclosure>, also provides information on how to carry out a risk assessment, including a list of possible indicators of a higher risk of reprisals or workplace conflict that might be relevant to the disclosure and the discloser's circumstances, which is also set out at Schedule 2.

If a disclosure is referred to the authorised officer by the discloser's supervisor, the supervisor is required to prepare a written risk assessment, as noted above. The authorised officer must review the supervisor's risk assessment in consultation with the supervisor and discloser as appropriate. As a result of the review, the authorised officer may make written comments which must become an addendum to the supervisor's assessment.

The authorised officer must submit their risk assessment, or the supervisor's assessment and the authorised officer's addendum, whichever is relevant, to the principal officer at the same time as they submit the completed Form 1 or Form 2, as provided at Schedule 4, to the principal officer.

The principal officer will consult with the Compliance Function and relevant senior managers on what appropriate actions might be undertaken, if any, to protect a discloser from the threat of reprisal or detriment and/or to mitigate the risk of workplace difficulties. Where possible the discloser must be consulted before any decision is made.

The risk assessment should be monitored and reviewed as necessary, including by checking with the discloser to see if reprisals have been made or threatened.

5.5 DISCLOSURES ALLOCATED TO HOUSING AUSTRALIA

If an authorised officer of another agency approaches a Housing Australia authorised officer with a view to allocating the handling of a disclosure made in that agency to Housing Australia, the authorised officer must consult the principal officer about whether to consent to the proposed allocation.

In considering the proposed allocation, Housing Australia authorised officer must have regard to the principle that an agency should not handle a disclosure unless some or all of the disclosable conduct with which the information is concerned relates to the agency.

If Housing Australia consents to the handling of a disclosure being allocated to it, the allocating agency will send the disclosure to the principal officer who will determine which investigation delegate will undertake the investigation of the disclosure.

6. ANONYMOUS DISCLOSERS

A public official may make a disclosure in an anonymous way if they wish to do so.

A disclosure is anonymous if:

- the identity of the discloser is not revealed; and

- no contact details for the discloser are provided or anonymous contact details are provided.

Persons considering making an anonymous disclosure should be aware that anonymous disclosures are often more difficult to investigate.

If the discloser remains anonymous and uncontactable, the authorised officer, the principal officer or their delegates will not be able to seek further information from the discloser, or advise the discloser of any action that might be taken.

Also, the principal officer or the principal officer's delegates have the discretion not to investigate the disclosure further if it is impracticable to do so because the discloser does not provide their name and contact details or is unable to give the principal officer or their delegate further information or assistance if they need it.

6.1 SUPERVISORS

A supervisor who receives an anonymous disclosure must refer it to an authorised officer as soon as is reasonably practicable, following the procedures set out in Part 4.

6.2 AUTHORISED OFFICERS – S 70 DETERMINATION

An authorised officer who receives an anonymous disclosure must consider whether to exercise their power in s 70 of the PID Act to determine that a person who has disclosed information to them is a public official in relation to the making of the disclosure. The authorised officer may make the determination:

- on the authorised officer's own initiative (s 70(2)(b)); or
- on a request being made to the authorised officer by the individual (s 70(2)(a)).

7. PROCEDURES FOR INVESTIGATORS

7.1 DECIDING WHETHER OR NOT TO INVESTIGATE

An authorised officer who decides that the disclosure should be allocated to Housing Australia must complete Form 2, as provided at Schedule 4, and send it to the principal officer.

On receipt of a completed Form 2 relating to an internal disclosure, the principal officer will determine which investigation delegate is to undertake the investigation of the disclosure and delegate their investigation functions and powers under the PID Act to that person.

The investigation delegate is required to keep the principal officer informed of progress and any developments with respect to the investigation.

7.2 DECIDING WHETHER OR NOT TO INVESTIGATE

If the investigation delegate has been given the contact details of the discloser, the delegate must, within 14 days after the disclosure was allocated to Housing Australia (when the principal officer received Form 2), inform the discloser, in writing using Form 4, as provided at Schedule 4, of:

- the delegate's powers to decide:
 - not to investigate the disclosure; or
 - not to investigate the disclosure further; and
- the grounds on which such a decision could be taken.

The investigation delegate must, as soon as practicable after receiving an allocation of a disclosure (whether from within or outside Housing Australia), consider whether to exercise the discretion under s 48 of the PID Act not to investigate the disclosure.

The investigation delegate may decide not to investigate (or may decide to discontinue an investigation already begun) if:

- the discloser is not a current or former public official (and a determination has not been made under s 70 of the PID Act);
- the information does not to any extent concern serious disclosable conduct;
- the disclosure is frivolous or vexatious;
- the disclosure is substantially the same as a disclosure that has been investigated under the PID Act;
- the disclosure is substantially the same as a disclosure that has already been investigated, or is currently being investigated, under another law of the Commonwealth, and:
 - it would be inappropriate to conduct another investigation at the same time; or
 - the delegate is reasonably satisfied that there are no matters that warrant further investigation;
- the discloser has informed the delegate that they do not wish the disclosure to be pursued and the delegate is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation; or
- it is impracticable to investigate the disclosure because:
 - the discloser has not revealed their name and contact details;
 - the discloser has refused or has failed or is unable to give the investigator the information they requested; or
 - of the age of the information.

Guidance on factors that might go towards the exercise of the power in s 48 is provided in the *Agency Guide to the Public Interest Disclosure Act 2013*, which can be found on the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au/about/making-a-disclosure>.

Decision not to investigate

If the investigation delegate decides under s 48 of the PID Act not to investigate a disclosure, the delegate must, as soon as reasonably practicable:

- inform the Commonwealth Ombudsman of that decision, and of the reasons for that decision, by completing the Notification of decision not to investigate form and sending it the Commonwealth Ombudsman's Office;
- where the delegate has been given the contact details of the discloser – inform the discloser of that decision, of the reasons for that decision and of other courses of action that may be available to the discloser under other laws of the Commonwealth, by completing Form 5, as provided at Schedule 4, and sending it to the discloser; and
- send a copy of the completed Forms 5 to the principal officer.

Decision to investigate

If the investigation delegate has decided that an investigation under the PID Act is to commence, and the delegate has been given the contact details of the discloser, the delegate must, as soon as reasonably practicable:

- inform the discloser that the delegate is required to investigate the disclosure under the PID Act; and
- inform the discloser of the estimated length of the investigation,

by completing Form 6, as provided at Schedule 4, and sending it to the discloser.

The investigation delegate must send a copy of the completed Form 6 to the principal officer.

Decision not to investigate further

If the investigation delegate decides to investigate the disclosure and starts to investigate the disclosure but then decides not to investigate the disclosure further under s 48, and the delegate has been given the contact details of the discloser, the delegate must:

- advise the discloser of that decision, of the reasons for the decision and of other courses of action that might be available to the discloser under other laws of the Commonwealth by completing Form 7, as provided at Schedule 4, and sending it to the discloser;
- advise the Commonwealth Ombudsman of that decision and the reasons by completing Notification of decision not to investigate form and sending it the Commonwealth Ombudsman's Office; and
- send a copy of the completed Form 7 to the principal officer.

7.3 CONDUCTING AN INVESTIGATION

If the investigation delegate decides to commence an investigation into a disclosure, the investigation delegate may conduct the investigation as they think fit.

The investigation delegate must be independent and unbiased in the matter. They must ensure that they do not have an actual or perceived conflict of interest.

The investigation delegate may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as they think fit.

When conducting an investigation, the investigation delegate must ensure that a decision whether evidence is sufficient to prove a fact is made on the balance of probabilities.

The investigation delegate has 90 days from the date the disclosure was allocated in which to complete the investigation, unless it has obtained an extension of time from the Commonwealth Ombudsman.

In conducting an investigation under these procedures, the investigation delegate must:

- comply with the Commonwealth Ombudsman's Standard; and
- act in accordance with any rules relating to fraud that are made for the purposes of the *Public Governance, Performance and Accountability Act 2013* (Cth).

Where the disclosure relates to a matter the investigation of which Housing Australia has established procedures in place (for example, misconduct, fraud), the investigation delegate may consider it appropriate to conduct a short preliminary investigation under the PID Act, with the recommended action in the PID investigation report being that further consideration of the matter should be in accordance with those established procedures.

In such situations, the PID Act protections for the discloser and general obligations to maintain confidentiality would continue to apply during any subsequent investigations and beyond.

7.4 INTERVIEWING WITNESSES

Subject to any restrictions imposed by a law of the Commonwealth other than the PID Act, the investigation delegate must ensure that a person interviewed as part of the investigation of a disclosure, is informed of:

- the identity and function of each person conducting the interview;
- the process of conducting an investigation;
- the authority of the delegate under the PID Act to conduct an investigation;
- the protections provided to the person by s 57 of the PID Act; and

- the person's duty:
 - if they are a public official – to use their best endeavours to assist the delegate in the conduct of an investigation under the PID Act (subject to the public official's privilege against incriminating themselves or exposing themselves to a penalty);
 - not to take reprisal action against the discloser; and
 - subject to the PID Act, not to disclose the identity of the person who made the disclosure.

If the investigation delegate conducts an interview as part of an investigation, at the end of the interview, the interviewee must be given an opportunity to make a final statement or comment or express a position. The delegate must include any final statement, comment or position in the record of the interview.

If the investigation delegate is aware of the discloser's identity and considers that it is necessary to reveal the discloser's identity to a witness, the delegate must consult with the discloser, where practicable, before proceeding.

7.5 REPORTS OF INVESTIGATIONS

In preparing a report of an investigation under the PID Act, the investigation delegate must comply with the PID Act, the Commonwealth Ombudsman's Standard and these procedures.

A report of an investigation under the PID Act must set out:

- the matters considered in the course of the investigation;
- the duration of the investigation;
- the delegate's findings (if any);
- the action (if any) that has been, is being or is recommended to be taken; and
- any claims made about, and any evidence of, detrimental action taken against the discloser, and the agency's response to those claims and that evidence.

In addition, where relevant, a report must:

- identify whether there have been one or more instances of disclosable conduct;
- identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates;
- explain the steps taken to gather evidence;
- set out a summary of the evidence; and
- set out the findings and recommendations made based on that evidence.

The investigation delegate must give a copy of the completed report of the investigation to the principal officer.

If the investigation delegate has been given the discloser's contact details, the delegate must, as soon as practicable, advise the discloser in writing using Form 8, as provided at Schedule 4:

- that the report has been completed; and
- whether the report was completed within the time limit provided for by the PID Act.

The investigation delegate must send a copy of the completed Form 8 to the principal officer.

The delegate must, within a reasonable time of preparing a report of an investigation under the PID Act, give a copy of the report to the discloser.

8. AFTER THE INVESTIGATION

The principal officer must take appropriate action in response to a recommendation and other matters contained in the investigation report.

9. CONFIDENTIALITY

The investigation of a disclosure should be conducted in as confidential a manner as is possible. In particular, the identity of both the discloser and the person alleged to have engaged in the disclosable conduct should not be revealed except where this is reasonably necessary for the effective investigation of the disclosure. Where it is likely that the discloser's identity will be revealed this should be discussed in advance with the discloser, unless it is not reasonably practicable to do so.

It is a criminal offence for a public official who is involved in handling a disclosure to reveal the discloser's identifying information to anyone else without the discloser's consent, or use it for another purpose, unless:

- the disclosure or use of the identifying information is:
 - for the purposes of the PID Act;
 - in connection with the performance of a function conferred on the Commonwealth Ombudsman by section 5A of the *Ombudsman Act 1976* (Cth);
 - in connection with the performance of a function conferred on the Inspector-General of Intelligence and Security by section 8A of the *Inspector-General of Intelligence and Security Act 1986* (Cth); or
 - for the purposes of a Commonwealth law or prescribed law of a State or Territory; or
- the identifying information has already lawfully been published.

Any interviews conducted by an authorised officer or an investigation delegate should be conducted in private.

Any interviews with the discloser should be arranged so as to avoid the identification of the discloser by Housing Australia staff.

10. RECORD KEEPING AND REPORTING

All records made for the purposes of the PID Act in accordance with these procedures must be marked as **Sensitive: Personal**.

Any email message sent by an authorised officer or investigation delegate that contains identifying information must be clearly marked 'To be read by named addressee only' in the subject heading with no other information provided in the heading.

Access to these electronic records must be restricted to the principal officer, authorised officers, delegates or other persons who require access in order to perform some function under the PID Act or for the purposes of another law of the Commonwealth (for example, under the *Work Health and Safety Act 2011* (Cth)).

- The system of privileges in document management systems must be used to ensure restricted access to electronic documents.
- Hard copies of documents must be stored in a cabinet in a locked office – they must not be kept in a container or cabinet that is accessible by an employee who is not authorised to access the record.

If a person ceases to be an authorised officer or delegate in Housing Australia (including because of resignation or movement to another agency), their public interest disclosure records must be transferred to another authorised officer or delegate in Housing Australia.

The requirements of the *Archives Act 1983* (Cth) relating to Commonwealth records (including the disposal, alteration and destruction of such records) apply to all records relating to PID Act disclosures.

11. MONITORING AND EVALUATION

The principal officer must provide the following information to the Commonwealth Ombudsman for the purpose of preparing the Commonwealth Ombudsman's annual report under the PID Act:

- the number of public interest disclosures received by authorised officers during the relevant financial year;
- the kinds of disclosable conduct to which those public interest disclosures related;
- the number of disclosure investigations that were conducted during the relevant financial year;
- the actions that were taken during the relevant financial year in response to recommendations in reports relating to those disclosure investigations; and

- any other information requested by the Commonwealth Ombudsman.

The principal officer is required to send Housing Australia's report to the Commonwealth Ombudsman within the time requested by the Commonwealth Ombudsman or as otherwise agreed with the Commonwealth Ombudsman.

To assist the principal officer in preparing this information:

- each authorised officer must provide a report to the principal officer by the date requested on the number of public interest disclosures they received during the financial year and the nature of the disclosable conduct for each disclosure, including any disclosures that have been allocated to Housing Australia by another agency's authorised officer. The report must also indicate the number of times they decided not to allocate a disclosure;
- each investigation delegate must provide a report to the principal officer by the date requested on the number of disclosure investigations they conducted during the financial year and the number of times they decided not to investigate a disclosure; and
- each person tasked by the principal officer during the year to take action in response to a recommendation made in an investigation report must make a report on the action taken and its status.

12. SEEKING ASSISTANCE

If you have any queries or need any assistance in relation to these procedures, you may wish to discuss with your supervisor, an authorised officer, the CEO, General Counsel or the Compliance Function.

General information on the Public Interest Disclosure scheme is also available on the Commonwealth Ombudsman's website: <http://www.ombudsman.gov.au/pages/pid/>.

SCHEDULE 1: PUBLIC INTEREST DISCLOSURE RISK ASSESSMENT

In assessing the risk of reprisals, the authorised officer, in consultation with the discloser and supervisor as appropriate, should use the following risk matrix:

LIKELIHOOD	CONSEQUENCES				
	Insignificant	Negligible	Moderate	Major	Extensive
Remote	VERY LOW	VERY LOW	LOW	MEDIUM	HIGH
Unlikely	VERY LOW	LOW	MEDIUM	MEDIUM	HIGH
Possible	VERY LOW	LOW	MEDIUM	HIGH	VERY HIGH
Likely	VERY LOW	LOW	MEDIUM	HIGH	VERY HIGH
Almost Certain	LOW	LOW	MEDIUM	HIGH	VERY HIGH

DEFINITION OF CONSEQUENCES

Insignificant: Occasional or one-off action which is likely to have virtually no adverse effect on the discloser

Negligible: Occasional or one-off action which is likely to have a relatively minor adverse effect on the discloser (for example, occasional exclusion of the discloser from a social activity)

Moderate: Repeated action which is likely to have an adverse effect on the discloser (for example, routinely failing to copy the discloser on work emails which they have a genuine need to know)

Major: Sustained or one-off action which has a significant impact on the discloser (for example, consistently exclude the discloser from team discussions to imposing a negative performance assessment without reasonable cause)

Extensive: Action which is likely to have a very severe impact on the discloser (for example, physical violence or denial of promotion opportunity without reasonable cause)

LIKELIHOOD FACTORS

When considering the likelihood of reprisal action being taken against a discloser, all relevant factors should be taken into account including:

- the likelihood of the discloser being identified (think about the size of the discloser’s work area and the number of people who are aware of the information leading to the disclosure);
- the number of people implicated in the disclosure;
- the subject matter of the disclosure;

- the culture of the workplace;
- whether any specific threats against the discloser have been received;
- whether there is a history of conflict between the discloser and the subject of the disclosure;
and
- whether the disclosure can be investigated while maintaining confidentiality.

CONSEQUENCE FACTORS

When considering potential reprisal actions that might be taken against a discloser, all relevant factors should be taken into account including:

- the significance of the issue being disclosed;
- the likely outcome if the conduct disclosed is substantiated;
- the subject matter of the disclosure;
- whether the discloser is isolated; and
- the relative positions of the discloser and the person whose alleged wrongdoing is the subject of the disclosure.

It may be appropriate to ask the discloser from whom they might fear a reprisal

SCHEDULE 2: INDICATORS OF A HIGHER RISK OF REPRISALS OR WORKPLACE CONFLICT

Indicators of a higher risk of reprisals or workplace conflict:¹

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

1 Adapted from NSW Ombudsman, *Managing risk of reprisals and conflict*, Public Interest Disclosure Guideline as provided in Commonwealth Ombudsman’s *Agency Guide to the Public Interest Disclosure Act 2013*, at page 28.

Vulnerable discloser	<p>Is or was the reported wrongdoing directed at the discloser?*</p> <p>Are there multiple subjects of the disclosure?</p> <p>Is the disclosure about a more senior officer?*</p> <p>Is the discloser employed part-time or on a casual basis?*</p> <p>Is the discloser isolated – for example, geographically or because of shift work?</p> <p>Are the allegations unlikely to be substantiated – for example, because there is a lack of evidence?*</p> <p>Is the disclosure being investigated outside your organisation?*</p>
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Table 1 – Indicators of a higher risk of reprisals or workplace conflict

* Note: Risks of poor treatment for reporting wrongdoing identified by research (Brown, AJ (ed.) 2008, *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations*, ANU E Press, Canberra, pp. 137-164).

SCHEDULE 3: SAMPLE AUTHORISED OFFICER EMAIL TO DISCLOSER

Subject: To be read by named addressee only

[SENSITIVE: PERSONAL]

Dear

As I foreshadowed during our discussion on [date], I am writing to you in my capacity as an Authorised Officer (AO) of Housing Australia for the purposes of the *Public Interest and Disclosure Act 2013* (Cth) (PID Act).

As discussed, I understand that on [date] you provided certain information to your supervisor who had reasonable grounds to believe that the information concerned, or could concern, 1 or more instances of 'disclosable conduct' which is defined at s 29 of the PID Act and includes:

- conduct that contravenes a Commonwealth law
- corruption or maladministration
- wastage of the Commonwealth's money or property
- conduct that unreasonably endangers the health and safety of other people or the environment
- conduct that could give rise to disciplinary action.

Under s 60A of the PID Act, your supervisor was required to give that information to an AO of Housing Australia. On [date], your supervisor passed that information to me.

Under s 43 of the PID Act, I am required to allocate the handling of your disclosure to Housing Australia/[or another agency] unless I am satisfied, on reasonable grounds, that there is no reasonable basis on which your disclosure could be considered to be an 'internal disclosure' as defined at s 26(1) of the Act. A disclosure of information is an internal disclosure if:

- the discloser is or was a public official (all Housing Australia employees, including contractors, are public officials)
- the recipient of the information is an authorised officer, or a supervisor of the discloser, and
- the information tends to show, or the discloser believes on reasonable grounds that the information tends to show, 1 or more instances of disclosable conduct.

Should I allocate the handling of your disclosure to Housing Australia/[or another agency], the Chief Executive Officer of Housing Australia/[or principal officer of that agency] or a person to whom he/she has delegated his/her investigatory powers under the PID Act, will investigate your disclosure or alternatively exercise their discretion under s 48 of the Act not to investigate your disclosure.

As part of the allocation process, I need to ask you two questions:

1. Do you consent to me giving your name and contact details to the Chief Executive Officer and the Chief Executive Officer's investigation delegate?

If you consent, and if the disclosure is allocated to Housing Australia/[or another agency], I will be required to also give your name and contact details to the Commonwealth Ombudsman as part of my obligation under s 44(1A) of the PID Act to inform the Commonwealth Ombudsman of any allocation of a disclosure to Housing Australia/[or another agency].

2. Do you wish your disclosure to be investigated?

Expressing a wish not to have your disclosure investigated does not necessarily mean that it will not be investigated. One of the grounds on which an investigation delegate may decide not to investigate a disclosure is if the discloser has informed the delegate that they do not wish the disclosure to be pursued and the delegate is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation.

I would be very grateful if you could respond to these questions by close of business [date]. If you do not respond within this period, you will be taken:

1. to have **not** consented to your name and contact details being given to the Chief Executive Officer and the Chief Executive Officer's investigation delegate (and the Commonwealth Ombudsman)
2. to wish that your disclosure be investigated.

I will inform you of my decision whether to allocate your disclosure to Housing Australia/[or another agency] as soon as practical.

If you do give such consent and the disclosure is allocated to Housing Australia/[or another agency], I will be required to give the discloser's name and contact details to the Commonwealth Ombudsman as part of the authorised officer's obligation under s 44(1A) of the PID Act to inform the Commonwealth Ombudsman of any allocation of a disclosure.

Finally, I also inform you that, should I allocate the handling of your disclosure to Housing Australia/[or another agency], the PID Act provides you with certain protections:

- your identity will be kept confidential as far as practicable – it is an offence to reveal or use identifying information about a discloser unless the discloser consents or for the purposes of the PID Act or another Commonwealth law
 - however, the protection of your identity cannot be guaranteed in all situations – for instance, other staff may guess or otherwise become aware that you have made a disclosure. Also, procedural fairness may require that your identity be revealed to the person who is the subject of the disclosure
- it is also an offence to take or threaten to take a reprisal, such as discriminatory treatment or termination of employment, against you because you made a disclosure under the PID Act
- you are immune from civil, criminal and administrative liability (including disciplinary action) for making the disclosure (unless you knowingly make a statement that is false or misleading)

- you should not discuss the details of your disclosure with anyone who does not have a need to know about it. Discussions with these people will not be protected by the PID Act
- a person who makes a disclosure is not entitled to protection from the consequences of any wrongdoing on their part in relation to the disclosure.

For further information about the PID Act please refer to <link to appropriate intranet page which includes information about PID scheme> or the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au/about/making-a-disclosure>.

Please contact me if you wish to discuss any aspects of this email or the operation of the PID Act more generally.

<Name>

Authorised Officer under the *Public Interest Disclosure Act 2013* (Cth)

SCHEDULE 4: FORMS

Public Interest Disclosure Act 2013 (Cth)

FORM 1 Notice to discloser - Decision not to allocate (s44(2))

To: [insert name of discloser]
[contact details: email address, postal address]

On, [insert date], I [insert name], an authorised officer of Housing Australia, received a disclosure from you.

In accordance with s 43(2) of the *Public Interest Disclosure Act 2013 (Cth)*, I have decided not to allocate this disclosure.

REASONS

I am satisfied that that there are no reasonable grounds on which the disclosure could be considered an internal disclosure because:

[insert one or more of the following grounds relied on]

- *you are not a public official and have not been a public official*
- *the information does not tend to show one or more instances of disclosable conduct*
- *the conduct was not engaged in by:*
 - i. *an agency*
 - ii. *a public official in connection with their position as a public official*
 - iii. *a contracted service provider for a Commonwealth contract in connection with entering into, or giving effect to, that contract*
- *the disclosure was not made to:*
 - i. *an authorised internal recipient; or*
 - ii. *your supervisor.*

OTHER COURSES OF ACTION THAT MAY BE AVAILABLE TO YOU

Other courses of action may be available to you under other laws of the Commonwealth. [Include if applicable, the following sentence if relevant to the kind of disclosable conduct in question, for example]: These could include:

- *seeking judicial review, under the Administrative Decisions (Judicial Review) Act 1977 (Cth), of my decision not to investigate the disclosure*
- *making an adverse action claim under the Fair Work Act 2009 (Cth)*
- *applying for an order to stop bullying under the Fair Work Act 2009 (Cth).*

Signed:

Date:

Public Interest Disclosure Act 2013 (Cth)

FORM 3

Notice to discloser of allocation (s44(2))

To: [insert name of discloser]
[contact details: email address, postal address]

I, [insert name], an authorised officer of Housing Australia, having received a disclosure from you under the *Public Interest Disclosure Act 2013 (Cth)*, have decided to allocate the disclosure to [insert agency or agencies].

Signed:

Date:

Public Interest Disclosure Act 2013 (Cth)

FORM 4

Notice to discloser - Investigation powers (s 9, Public Interest Disclosure Standard 2013)

To: [insert name of discloser]
[contact details: email address, postal address]

I, [insert name], [am the delegate of] the principal officer of Housing Australia who will be considering your disclosure and advise you that my powers [as delegate] include:

- to decide under s 48 of the *Public Interest Disclosure Act 2013 (Cth)* (PID Act) not to investigate the disclosure on a ground or grounds set out in that section (refer to page 2), or
- if the investigation has started, to decide under s 48 of the PID Act not to investigate the disclosure further on a ground or grounds set out in that section (refer to page 2).

Signed:

Date:

Section 48 of the *Public Interest Disclosure Act 2013 (Cth)* – grounds on which to decide not to investigate or not to investigate further**48 Discretion not to investigate**

- (1) Despite section 47, the principal officer of the agency may decide not to investigate the disclosure, or (if the investigation has started) not to investigate the disclosure further, if:
- (a) the discloser is not, and has not been, a public official; or
 - (b) the information does not, to any extent, concern serious disclosable conduct; or
 - (c) the disclosure is frivolous or vexatious; or
 - (d) the information is the same, or substantially the same, as information the disclosure of which has been, or is being, investigated as a disclosure investigation; or
 - (e) the information concerns disclosable conduct that is the same, or substantially the same, as disclosable conduct that is being investigated under:
 - (i) a law of the Commonwealth other than this Act; or
 - (ii) the executive power of the Commonwealth;and it would be inappropriate to conduct another investigation at the same time; or
 - (f) the information concerns disclosable conduct that is the same, or substantially the same, as disclosable conduct that has been investigated under:
 - (i) a law of the Commonwealth other than this Act; or
 - (ii) the executive power of the Commonwealth;and the principal officer is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation; or
 - (g) the discloser has informed the principal officer of an agency that the discloser does not wish the investigation of the internal disclosure to be pursued, and the principal officer is reasonably satisfied that there are no matters concerning the disclosure that warrant investigation; or
 - (h) it is impracticable for the disclosure to be investigated:
 - (i) because the discloser's name and contact details have not been disclosed; or
 - (ii) because the discloser refuses or fails, or is unable, to give, for the purposes of the investigation, such information or assistance as the person who is or will be conducting the investigation asks the discloser to give; or
 - (iii) because of the age of the information.

Public Interest Disclosure Act 2013 (Cth)

FORM 5

Notice to discloser - Decision not to investigate (s 50(2))

To: [insert name of discloser]
[contact details: email address, postal address]

On [insert date], I, [insert name], [a delegate of] the principal officer of Housing Australia decided under s 48 of the *Public Interest Disclosure Act 2013 (Cth)* not to investigate the disclosure made by you and allocated to this agency on [insert date of allocation].

REASONS FOR DECISION

I decided not to investigate the disclosure further on the ground that:

[insert ground or grounds relied on in s 48(1)]

[for example:

- *the disclosure is frivolous or vexatious;*
- *that the information does not, to any extent, concern serious disclosable conduct]*

because [insert findings of fact for this conclusion and reasoning process that led to this conclusion].

OTHER COURSES OF ACTION THAT MAY BE AVAILABLE TO YOU

Other courses of action may be available to you under other laws of the Commonwealth. [Include if applicable, the following sentence if relevant to the kind of disclosable conduct in question, for example: These could include:

- *seeking judicial review, under the Administrative Decisions (Judicial Review) Act 1977 (Cth), of my decision not to investigate the disclosure*
- *making an adverse action claim under the Fair Work Act 2009 (Cth)*
- *applying for an order to stop bullying under the Fair Work Act 2009 (Cth).]*

Signed:

Date:

Public Interest Disclosure Act 2013 (Cth)

FORM 6

Notice to discloser - Investigation of your disclosure (s 50(1))

To: [insert name of discloser]
[contact details: email address, postal address]

On [insert date], I, [insert name], [a delegate of] the principal officer of Housing Australia, decided under s 47 of the *Public Interest Disclosure Act 2013* (Cth) to investigate the disclosure made by you and allocated to this agency on [insert date of allocation].

ESTIMATED LENGTH OF THE INVESTIGATION

I estimate that the investigation will be completed in [insert number] days from the date your disclosure was allocated to this agency.

Signed:

Date:

Public Interest Disclosure Act 2013 (Cth)

FORM 7

Notice to discloser - Decision to cease investigation (s 50(2))

To: [insert name of discloser]
[contact details: email address, postal address]

On [insert date], I, [insert name], [a delegate of] the principal officer of Housing Australia, having started to investigate the disclosure allocated to this agency on [insert date of allocation] (our reference: [PID2015/*****.*]), decided not to investigate the disclosure further.

REASONS FOR DECISION

I have decided not to investigate the disclosure further on the ground that:

[insert ground or grounds relied on in s 48(1)]

[for example:

- *the disclosure is frivolous or vexatious;*
- *that the information does not, to any extent, concern serious disclosable conduct]*

because [insert findings of fact for this conclusion and reasoning process that led to this conclusion].

OTHER COURSES OF ACTION THAT MAY BE AVAILABLE TO YOU

Other courses of action may be available to you under other laws of the Commonwealth. [Include if applicable, the following sentence if relevant to the kind of disclosable conduct in question, for example: *These could include:*

- *seeking judicial review, under the Administrative Decisions (Judicial Review) Act 1977 (Cth), of my decision not to investigate the disclosure*
- *making an adverse action claim under the Fair Work Act 2009 (Cth)*
- *applying for an order to stop bullying under the Fair Work Act 2009 (Cth).]*

Signed:

Date:

*Public Interest Disclosure Act 2013 (Cth)***FORM 8****Notice to discloser of completion of report**

To: [insert name of discloser]
[contact details: email address, postal address]

I, [insert name], [the delegate of] the principal officer of Housing Australia who investigated your disclosure, now advise you that the report of the investigation was completed on [insert date of completion of report].

The investigation [was therefore/was not] completed within the time limit under the *Public Interest Disclosure Act 2013 (Cth)* (PID Act) for the investigation.

You will be provided with a copy of the report of the investigation shortly, but you should be aware that the copy provided to you may have material deleted from it, in accordance with the PID Act.

Signed:

Date: