



Australian Government
National Indigenous
Australians Agency



NIAA

Public Interest Disclosure Procedures

November 2023

Working with Aboriginal and Torres Strait Islander peoples



Australian Government
National Indigenous Australians Agency

Public Interest Disclosure Procedures

I, Jody Broun, Chief Executive Officer and Principal Officer of the National Indigenous Australians Agency, revoke all previous versions of the Public Interest Disclosure Procedures of the National Indigenous Australians Agency and establish the following procedures under subsection 59(3) of the *Public Interest Disclosure Act 2013* (Cth).

These procedures take effect upon signature.

A handwritten signature in black ink, appearing to be 'Jody Broun'.

1/12/23

Jody Broun

Chief Executive Officer

November 2023

Contents

Authorisation	1
NIAA Public Interest Disclosure Procedures.....	4
1. Overview	4
Purpose	4
Statement of commitment.....	4
2. Public Interest Disclosure	5
What is a public interest disclosure?.....	5
Responsibilities for all NIAA Staff and contractors.....	5
Offences under the PID Act.....	6
3. Making a Disclosure	7
Who can make an internal disclosure?	7
What is disclosable conduct?	7
What is not disclosable conduct?.....	8
Personal work-related conduct.....	8
Disagreement with government policy or actions	9
Activities of grant recipients	9
Conduct related to courts, tribunals and the Parliament	9
How to make an internal disclosure.....	10
What information should be included in an internal disclosure?	10
Anonymous disclosures.....	11
Public officials performing their ordinary functions	11
Disclosures to the NACC.....	12
4. Information for Disclosers and Witnesses	13
Protections for disclosers and witnesses	13
Support for disclosers and witnesses	14
Confidentiality.....	14
Discloser and Witnesses' responsibilities.....	15
PID handling complaints.....	15
5. Procedures for NIAA Supervisors	16
Role of NIAA Supervisors.....	16
Responsibilities of NIAA Supervisors	17
Steps for NIAA Supervisors.....	17
Step 1: Initial consideration	17
Step 2: Inform the discloser of the PID process	17
Step 3: Document the information	18



- Step 4: Refer information to a NIAA Authorised Officer and update the discloser18
- 6. Procedures for NIAA Authorised Officers.....19
 - Role of NIAA Authorised Officers19
 - Responsibilities of NIAA Authorised Officers19
 - Steps for NIAA Authorised Officers20
 - Step 1: Initial consideration20
 - Step 2: Allocation decision22
 - Step 3: Inform relevant persons of decision24
 - Step 4: Make a record25
- 7. Procedures for NIAA PID Investigators.....27
 - Role of the Principal Officer and PID Investigators27
 - Responsibilities of PID Investigators27
 - Steps for NIAA PID Investigators28
 - Step 1: Provide initial information to the discloser28
 - Step 2: Consider whether or not to investigate the disclosure28
 - Step 3: Inform relevant persons of decision29
 - Step 4: Conduct the PID investigation31
 - Step 5: Prepare PID investigation report.....34
 - Step 6: Provide a copy of report to the relevant persons35
 - Step 7: Recommendations36
- 8. NACC and PID37
 - Mandatory referrals to the NACC37
 - NACC stop action directions.....38
 - Notification requirements.....38
 - A stop action direction stays in place until revoked.....39
- 9. Administration40
 - Record keeping and privacy40
 - Reporting.....40
 - Definitions41
 - Resources43
 - Related policies43
 - Review43
 - Version control43
- Appendix A: Reprisal Risk Assessment44
 - Reprisal Risk Assessment44
 - Step 1: Conduct a reprisal risk assessment45
 - Step 2: If necessary, develop a risk mitigation strategy47

NIAA Public Interest Disclosure Procedures

1. Overview

Purpose

- 1.1 This document sets out the procedures for the National Indigenous Australians Agency (NIAA) to facilitate and respond to [public interest disclosures \(PIDs\)](#) for the purposes of section 59(3) of the *Public Interest Disclosure Act 2013* ([PID Act](#)). These PID procedures are to be read together with the PID Act, the *Public Interest Disclosure Standard 2013* ([PID Standard](#)), the *Public Interest Disclosure Rules 2019* ([PID Rules](#)) and the *National Anti-Corruption Commission Act 2022* ([NACC Act](#)).
- 1.2 These PID procedures contain information about:
 - how a PID can be made to the NIAA;
 - how the NIAA will manage PIDs; and
 - how a PID interacts with the NACC Act.

Statement of commitment

- 1.3 The NIAA is committed to the highest standards of ethical and accountable conduct. To uphold the NIAA's good reputation, and to maintain a safe and ethical workplace, [public officials](#) who are aware of suspected serious wrongdoing in the NIAA (or elsewhere in the Commonwealth public sector) are encouraged to report such concerns.
- 1.4 Making a [disclosure](#) under the PID Act is an avenue to report issues of suspected serious wrongdoing. The NIAA will ensure that PIDs (or 'disclosures') are managed in accordance with the PID Act and the procedures contained in this document (as well as other relevant legislation, such as the NACC Act).
- 1.5 The NIAA will take reasonable steps to ensure those who make a disclosure under the PID Act, or who are considering making a disclosure, about [disclosable conduct](#), are supported and protected from any reprisal action or threat of reprisal relating to the disclosure in accordance with the PID Act.

2. Public Interest Disclosure

What is a public interest disclosure?

- 2.1 A PID is a disclosure, made by a public official, of suspected serious wrongdoing in the Commonwealth public sector.
- 2.2 An internal PID generally occurs when:
- a current or former [public official](#) (the [discloser](#))
 - discloses to their [Supervisor](#) or an [Authorised Officer](#)
 - information which tends to show, or the discloser believes on reasonable grounds tends to show, one or more instances of [disclosable conduct](#).
- 2.3 The PID process includes an assessment by an Authorised Officer of whether the information disclosed reasonably tends to show disclosable conduct and if it does, allocates or refers it to a Commonwealth agency for investigation or other action.
- 2.4 The PID scheme is designed to facilitate internal disclosures and investigations. In limited circumstances, a public official may make a disclosure to a person outside of the Australian Government (an external disclosure or an emergency disclosure). The [Commonwealth Ombudsman website](#) contains more information about external or emergency disclosures.
- 2.5 NIAA staff and contractors who are unsure whether they can make a disclosure under the PID Act can:
- contact an NIAA Authorised Officer;
 - seek guidance and assistance from the Commonwealth Ombudsman; and / or
 - seek independent legal advice to see if they are protected under the PID Act.
- 2.6 The PID Act complements existing complaint handling processes such as those relating to fraud, serious and systemic corruption, or code of conduct issues. NIAA staff and contractors considering making a disclosure and wanting to know more about the other options available for raising their concerns can also approach any of the following as appropriate:
- Group HR Advisor;
 - Work Health and Safety Representative;
 - Chief People Officer; and / or
 - Fraud and Integrity Helpdesk.

Responsibilities for all NIAA Staff and contractors

- 2.7 All NIAA staff and contractors share the responsibility of ensuring the PID scheme works effectively. This includes:



- escalating to an appropriate person (a Supervisor or Authorised Officer) where there is evidence that shows or tends to show disclosable conduct;
 - identifying areas where there may be opportunities for serious wrongdoing to occur because of inadequate systems or procedures, and proactively raising those with management;
 - keeping confidential the identity of a discloser, anyone against whom an allegation has been made, or anyone who has contributed to a PID investigation, if they become aware of those matters;
 - keeping information regarding a disclosure or PID investigation confidential; and
 - reporting any threats or reprisal action in relation to the disclosure to their [Supervisor](#) or [Authorised Officer](#).
- 2.8 The PID Act requires all public officials to use their best endeavours to assist the [PID Investigator](#) in the conduct of an investigation. They must also use their best endeavours to assist:
- any other public official to exercise a right, or perform a duty or function, under the PID Act; and
 - the Commonwealth Ombudsman and the [IGIS](#) in their functions under the PID Act.

Offences under the PID Act

- 2.9 The PID Act makes it a criminal offence to:
- take, or threaten to take, reprisal action against a person who has made a PID; and
 - use or disclose information likely to enable the identification of a person who has made a PID, except in limited circumstances such as where it is for the purposes of the PID Act, with the consent of the person who has made the PID, or otherwise permitted by law.

3. Making a Disclosure

In this section:

Who can make a disclosure?

What is disclosable conduct?

What is not disclosable conduct?

How to make a disclosure

What information should be included in a disclosure?

Anonymous disclosures

Public officials performing their ordinary functions

Who can make an internal disclosure?

- 3.1 A current or former [public official](#) can make a [disclosure](#) under the [PID Act](#).
- 3.2 The full definition of a public official is set out in section 69 of the PID Act, and includes:
 - an APS or Commonwealth employee (ongoing, non-ongoing and casual);
 - service providers under contract to the Commonwealth and their employees for purpose of the contract; and
 - statutory office holders.
- 3.3 An [Authorised Officer](#) may deem a person to be a public official if they reasonably believe the individual has information about suspected serious wrongdoing and proposes to make a disclosure in accordance with section 70 of the PID Act.

What is disclosable conduct?

- 3.4 A current or former public official can disclose information they believe, on reasonable grounds, tends to show [disclosable conduct](#). The full definition of disclosable conduct is set out in section 29 of the PID Act.
- 3.5 Disclosable conduct is conduct by a Commonwealth agency, or one of its employees (or contractors), in connection with their position (or contract), that:
 - contravenes a law of the Commonwealth, a State or a Territory;



- occurs in a foreign country and contravenes a law in force in that country that applies to the agency or public official;
 - perverts, or attempts to pervert, the course of justice or involves corruption of any other kind;
 - constitutes maladministration, including conduct that is negligent, based on improper motives, or unreasonable, unjust or oppressive;
 - is an abuse of public trust;
 - involves fabrication, falsification, plagiarism or deception in relation to scientific research, or misconduct in relation to scientific work;
 - results in the wastage of public money or public property;
 - unreasonably endangers health and safety;
 - endangers the environment;
 - is prescribed by the PID Rules;
 - is engaged in by a public official that involves abuse of the public official's position; or
 - could, if proved, give reasonable grounds for termination (other than personal work-related conduct).
- 3.6 There are no time limits for making a disclosure. A disclosure can be made about conduct that occurred at any time. However, if the age of the disclosed information would make investigation impracticable, there may be a discretion not to investigate. For more information, see under [Procedures for PID Investigators](#).
- 3.7 In some circumstances, where an issue reported under the PID Act falls within the meaning of disclosable conduct there is a discretion to not investigate, for example, where the information does not concern serious disclosable conduct or the disclosure is frivolous or vexatious. For more information, see under [Procedures for PID Investigators](#).

What is not disclosable conduct?

- 3.8 There are a number of categories of conduct that are not disclosable conduct under the PID Act.

Personal work-related conduct

- 3.9 Personal work-related conduct is not disclosable conduct under the PID Act, unless the conduct:
- constitutes reprisal action; or
 - is of such a significant nature it would undermine public confidence, or has other significant implications, for the NIAA or another agency.

3.10 Personal work-related conduct is conduct by one public official in relation to another public official that has personal implications for the second official. The conduct must have occurred in relation to the second official's employment, engagement, appointment or an exercise of their functions and powers as a public official.

3.11 Some examples of personal work-related conduct include:

- interpersonal conflict, such as bullying or harassment;
- changing a person's duties;
- disciplinary action;
- adverse decisions about promotion or temporary acting arrangements;
- terms and conditions of employment or engagement;
- suspension or termination; or
- actions that could be reviewed under s 33 of the *Public Service Act 1999*, or other review processes relating to terms or conditions of engagement or appointment.

3.12 However, if a disclosure relates to both personal work-related conduct and other types of wrongdoing, it may still be covered by the PID Act as long as the other type of wrongdoing meets the definition of disclosable conduct.

Disagreement with government policy or actions

3.13 Matters that reflect private or personal views are generally not disclosable conduct. This includes a disagreement with:

- Australian Government policy or proposed policy;
- an action or proposed action by a Minister, the Speaker of the House of representatives or the President of the Senate; or
- expenditure or proposed expenditure related to such policy or action.

Activities of grant recipients

3.14 Grant recipients are generally not public officials for the purposes of the PID Act. This means that the conduct of the recipient of a grant, or of employees of a recipient of a Commonwealth grant, would not be disclosable conduct.

3.15 However, an Authorised Officer may deem a grant recipient to be a public official under section 70 of the PID Act, if they reasonably believe the individual has information about wrongdoing and proposes to make a disclosure.

Conduct related to courts, tribunals and the Parliament

3.16 The PID Act does not apply to the conduct of a court or tribunal, or staff members of a court or tribunal, unless it is of an administrative nature.

3.17 The conduct of Members of Parliament or of MOP(S) Act employees is not covered by the PID Act. This is because they are not 'public officials' under the PID act.

How to make an internal disclosure

- 3.18 A current or former public official may make a disclosure orally or in writing. This may be done anonymously or in an identified manner. The discloser does not have to state that they are reporting a matter under the PID Act.
- 3.19 A current or former public official can make an internal disclosure to:
- an [NIAA Authorised Officer](#) (includes the [Principal Officer](#));
 - their [Supervisor](#); or
 - the Commonwealth Ombudsman, if they believe on reasonable grounds that it would be appropriate for the Commonwealth Ombudsman to investigate (disclosures made to the Commonwealth Ombudsman may be referred to the NIAA or another agency for handling).
- 3.20 Under the PID Act, a Supervisor is a public official who supervises or manages the person making the disclosure. If an internal disclosure is made by a public official to their supervisor, the supervisor must refer the disclosure to an Authorised Officer as soon as reasonably practicable. The Supervisor must also explain certain matters to the discloser. For more information, see under [Procedures for NIAA Supervisors](#).
- 3.21 NIAA Authorised Officers are appointed by the [Principal Officer](#). It is important to be aware that Authorised Officers and Supervisors have mandatory obligations to act on disclosures that they receive.
- 3.22 The list of current NIAA Authorised Officers is available on the NIAA intranet or by contacting pid@niaa.gov.au.
- 3.23 NIAA staff and contractors may submit a PID, or seek more information on the PID process, by contacting a NIAA Authorised Officer:

Email: pid@niaa.gov.au and the PID Team will forward the email to an appropriate Authorised Officer

Post: Public Interest Disclosure
National Indigenous Australians Agency
PO Box 2191
Canberra ACT 2601

What information should be included in an internal disclosure?

- 3.24 A public official does not have to follow a specific format to make an internal disclosure. But a public official should cover as many of the following matters as possible to help the NIAA determine how to proceed:
- your name and contact details (although you may choose to remain anonymous);
 - details of the suspected wrongdoing;
 - who you think performed the alleged wrongdoing;
 - when and where the suspected wrongdoing occurred;
 - how you became aware of the suspected wrongdoing;



- if anything has been done in response to the alleged wrongdoing;
- who else knows about the alleged wrongdoing and any action they have taken;
- all relevant background information and events;
- if you believe the information is a public interest disclosure, however it does not need to be described this way for it to be treated as a public interest disclosure; and
- any concerns about possible reprisal as a result of making a disclosure.

3.25 NIAA staff should not investigate a matter themselves before or after making a disclosure.

Anonymous disclosures

3.26 Disclosures can be made anonymously. Disclosures are considered anonymous if the identity of the discloser is not provided or not known. For example, a disclosure may be treated as an anonymous disclosure if it comes from an email address from which the discloser's identity cannot be determined, and the discloser does not identify themselves in the email.

3.27 If a disclosure is made anonymously, it may be difficult:

- for an Authorised Officer to assess or otherwise manage the disclosure;
- for a PID Investigator to properly investigate the disclosure;
- to protect a discloser from reprisal action or threats of reprisal; and
- for the NIAA to communicate with the discloser throughout the process (including, for example, to seek any further information or inform a discloser of the outcome of the matter).

Public officials performing their ordinary functions

3.28 A public official whose ordinary functions include sharing information about wrongdoing in the NIAA with their Supervisor or an Authorised Officer will not meet the requirements for making an internal disclosure, if the disclosure is made in the course of performing their ordinary functions. For example, a public official working in internal fraud, compliance, case management, human resources or protective security, speaking to their Supervisor or an Authorised Officer in the course of performing their usual role.

3.29 If a public official in such a role intends to make a public interest disclosure, they will need to clearly express that intent when making the disclosure to an Authorised Officer or to their Supervisor.



Disclosures to the NACC

- 3.30 The National Anti-Corruption Commission (**NACC**) is an independent Commonwealth agency responsible for detecting, preventing, investigating and reporting on serious or systemic corrupt conduct in the Commonwealth public sector.
- 3.31 A public official can make a disclosure relating to corrupt conduct directly to the NACC without needing to make an internal disclosure to a NIAA Authorised Officer or Supervisor first.
- 3.32 A person who makes a NACC disclosure will receive protections under the NACC Act. These protections are similar to the protections contained in the PID Act, and include immunity from criminal, civil and administrative liability and protection from reprisal action.
- 3.33 If a public official makes a disclosure to the NACC (a **NACC Disclosure**) that is also about disclosable conduct, they may be able to access protections under both the PID Act and the NACC Act. This will only apply if the disclosure to the NACC is also about disclosable conduct under the PID Act.
- 3.34 A public official who makes an internal disclosure to the NIAA, and that disclosure is referred by a PID Officer to the NACC, will only receive protections under the PID Act.
- 3.35 It is important to be aware of the differences between the two schemes, as the protections that apply to a disclosure of information will be different depending on whether it is a NACC disclosure, a PID, or both a NACC disclosure and a PID.

4. Information for Disclosers and Witnesses

In this section:

Protections for disclosers and witnesses

Support for disclosers and witnesses

Confidentiality

Discloser's responsibilities

PID handling complaints

Protections for disclosers and witnesses

- 4.1 Where a [disclosure](#) falls under the [PID Act](#), the discloser has the benefit of certain protections, including immunity from:
 - a. criminal and civil liability; and
 - b. disciplinary actionfor making a disclosure.
- 4.2 [Disclosers](#) are also protected from reprisal action causing a detriment in relation to the discloser's employment because a person believed or suspected that the discloser has made, may have made, propose to make or could make a PID. The PID Act does not place any time limits on protections.
- 4.3 Witnesses who assist with a PID Investigation are protected from civil, criminal and administrative liability, including disciplinary action, for providing assistance.
- 4.4 It is important to understand that making a disclosure does not protect the discloser from the consequences of their own wrongdoing, including where they have been involved in the misconduct they are reporting. The discloser's immunity from liability under the PID Act relates only to the act of making the public interest disclosure, not the conduct the disclosure is about.
- 4.5 Similarly, a discloser or other witness who discusses a PID with people who are not performing a function under the PID Act, will not be covered by the protections in the PID Act. There are limited exceptions where the discussion meets the criteria of a NACC disclosure (within the meaning of the NACC Act) or an external disclosure under the PID Act.

- 4.6 A discloser or witness who knowingly makes a false or misleading disclosure, or contravenes a designated publication restriction without reasonable excuse, will not receive protections under the PID Act. Similarly, the protections under the PID Act do not prevent an employer from investigating allegations of misconduct against a person, or otherwise managing a person's employment, unless the reason (or part of the reason) for doing so is that the employer believes or suspects the person made, may have made, or proposes to make a PID.
- 4.7 When a disclosure is made, and an [Authorised Officer](#) determines it to be a PID under the PID Act, the Authorised Officer or a PID Investigator will conduct a reprisal risk assessment. This will consider the risk of reprisal action being taken against the discloser. For more information see under [Appendix A: Reprisal Risk Assessment](#).

Support for disclosers and witnesses

- 4.8 The NIAA will take reasonable steps to support disclosers and witnesses. This may include taking one or more of the following actions:
- advising of the availability of the Employee Assistance Program (EAP);
 - offering a person who is responsible for regularly checking on their wellbeing;
 - providing regular updates on the progress of any investigation to the discloser, where it is practicable to do so;
 - maintaining contact with the discloser or witness to ensure they are not experiencing reprisals (including threats to cause detriment), where it is practicable to do so;
 - where there are any concerns about their health and wellbeing, liaising with the NIAA's wellbeing, Human Resources, or work health and safety section(s);
 - transferring the discloser or witness to a different area within the workplace or approving remote / teleworking (with their consent). This may only be appropriate in cases involving major or severe reprisal risk; and
 - providing the discloser with information to help understand the reasons why their matter is not allocated for investigation or if an investigation is unable to substantiate their allegations (when this occurs).
- 1.6 If a discloser or witness believes that detrimental action has or will be taken against them as a reprisal for the disclosure or PID investigation, they should immediately tell the Authorised Officer or PID Investigator.

Confidentiality

- 4.7 The PID Act creates an offence:
- a. to use or disclose identifying information regarding a discloser or other information obtained in the course of performing certain activities under the PID Act,
 - b. unless it is:
 - i. for the purposes of the PID Act, or
 - ii. within other limited exceptions.
- 4.8 Some reasons why it may be reasonably necessary to use or disclose identifying information about a discloser include:



- procedural fairness requirements;
 - where, due to the nature of the allegation under investigation, not knowing the discloser's identity would prevent a witness from offering essential or relevant information;
 - where it is necessary to supporting strategies that protect disclosers and witnesses from reprisal action; and
 - for the effective handling of the disclosure.
- 4.9 A discloser's identity can also be shared with their consent.
- 4.10 If a **PID Officer** is required to refer a corruption issue under the NACC Act, they must include all relevant information, including the discloser's identity, if the information is known and relevant to the corruption issue. A PID Officer does not have to obtain a discloser's consent to provide their name to the NACC.
- 4.11 If a Supervisor, Authorised Officers or the PID Investigator sends an email about a disclosure, they should include in the subject line *"For Addressee Eyes Only - Public Interest Disclosure"*.
- 4.12 Any meetings, enquiries or interviews conducted by an Authorised Officer or the PID Investigator should be done in private.

Discloser and Witnesses' responsibilities

- 4.13 A current or former public official making an internal disclosure, or assisting in a PID investigation, should:
- be clear and accurate in disclosing suspected serious wrongdoing and providing any supporting evidence (without knowingly or recklessly making any false or misleading statements);
 - make disclosures in good faith;
 - provide reasonable assistance as required during a PID investigation;
 - seek advice about the process and their rights and responsibilities as needed; and
 - alert the Authorised Officer or the PID Investigator to any possible reprisal action or threats of reprisal action in relation to a disclosure.

PID handling complaints

- 4.14 The Ombudsman can receive and investigate complaints about the way Commonwealth agencies have handled a PID. Further information on this process is available at: <http://www.ombudsman.gov.au>.

5. Procedures for NIAA Supervisors

In this section:

Role of NIAA Supervisors

Responsibilities of NIAA Supervisors

Steps for NIAA Supervisors

Step 1: Initial consideration

Step 2: Inform the discloser of the PID process

Step 3: Refer information to a NIAA Authorised Officer

Role of NIAA Supervisors

5.1 Under the [PID Act](#), a [Supervisor](#) is a [public official](#) who supervises or manages the person making the disclosure. This may include shared supervisory relationships, or any supervisor in the reporting line of the person making the disclosure.

A Supervisor in the NIAA may include:

- the person who usually approves the public official's time sheets and /or leave applications;
- the person who approves the public official's performance agreement in accordance with the NIAA performance framework;
- a Branch Manager, for staff in their Branch;
- a Group Manager, for staff in their Group; or
- the Deputy CEO or Chief Operating Officer with responsibility for a Branch or Group.

5.2 Importantly, disclosures made in the course of a person performing their ordinary functions as a public official are not a PID. This means that routine discussions between a public official and their Supervisor are not a PID, and do not require referral to a NIAA [Authorised Officer](#). The exclusion does not prevent the staff member from making a PID. To do so – they must make their intention to make a PID clear when communicating to their Supervisor.

5.3 Supervisors have a key role in ensuring the NIAA's workplace culture supports the making of PIDs, and they should:

- familiarise themselves with the framework of the PID Act and these procedures, particularly what is 'disclosable conduct', their obligation to inform a NIAA Authorised Officer and the [confidentiality requirements](#);



- support a staff member who they know has made a disclosure, and take reasonable steps to protect the staff member from reprisal action;
- be approachable to staff who wish to raise concerns and confront any workplace prejudices about making a disclosure;
- ensure staff complete available training, awareness sessions or discussion forums;
- pay close attention to interaction in the workplace where necessary (e.g. if workplace conflict occurs after a disclosure is made or while it is being investigated); and
- assist the NIAA Authorised Officer and the NIAA PID Investigator in the conduct of a PID matter.

5.4 NIAA Supervisors can obtain further information from the NIAA Intranet and by contacting an NIAA Authorised Officer.

Responsibilities of NIAA Supervisors

5.5 An NIAA Supervisor who:

- receives a disclosure from one of their staff; and
- has reasonable grounds to believe the information concerns, or could concern, [disclosable conduct](#);

must pass the information to a NIAA Authorised Officer for handling under the PID Act, as soon as reasonably practicable and explain certain matters to the discloser.

Steps for NIAA Supervisors

Step 1: Initial consideration

5.6 Before referring the information to an NIAA Authorised Officer, the Supervisor must *as soon as reasonably practicable* consider whether there are reasonable grounds to believe the information concerns, or could concern, [disclosable conduct](#).

5.7 If a Supervisor is unsure if the information disclosed to them tends to show disclosable conduct, they should err on the side of caution and refer the information to a NIAA Authorised Officer to determine whether it is a PID.

Step 2: Inform the discloser of the PID process

5.8 The Supervisor must:

- inform the discloser their disclosure could be treated as an internal disclosure;
- tell the discloser the Supervisor must give the information to a NIAA Authorised Officer;

- 
- explain to the discloser the next steps in the PID process (i.e. the information will be given to an NIAA Authorised Officer, where it will be potentially allocated to the NIAA or another agency, and investigated by the Principal Officer of that agency);
 - advise the discloser about the circumstances in which a PID must be referred to an agency or other person or body, under another law of the Commonwealth (i.e. the information may be referred to the NACC if the disclosure could involve serious or systemic corrupt conduct); and
 - explain the civil and criminal protections the PID Act provides to disclosers and those assisting with the handling of a PID (see under [Protections for Disclosers and Witnesses](#)).

Step 3: Document the information

5.9 The Supervisor should:

- make or ensure there is a written record of the information, including as much detail as possible. The written record of the information should include the time and the date the information was disclosed, and any records provided by the discloser;
- ask the discloser to endorse the record of information (for example, by signing the written record or providing an email to confirm the written record is an accurate account of the information), where it is practicable to do so; and
- assist the discloser as appropriate to find information in these procedures and / or on the NIAA Intranet about PIDs.

Step 4: Refer information to a NIAA Authorised Officer and update the discloser

5.10 Supervisors must provide all information relating to the disclosure (including all records) to an Authorised Officer.

5.11 The Supervisor must advise the discloser:

- a. they have given the information to a NIAA Authorised Officer, and
- b. the name and contact details of that Authorised Officer.

6. Procedures for NIAA Authorised Officers

In this section:

Role of NIAA Authorised Officers

Responsibilities of NIAA Authorised Officers

Steps for NIAA Authorised Officers

Step 1: Initial consideration

Step 2: Allocation decision

Step 3: Inform relevant persons of decision

Step 4: Make a record of the allocation decision

Role of NIAA Authorised Officers

- 6.1 NIAA [Authorised Officers](#) are the NIAA [CEO](#) and NIAA staff who are appointed in writing as an [Authorised Officer](#) under the [PID Act](#). The names of NIAA Authorised Officers can be found on the NIAA Intranet or by contacting PID@niaa.gov.au.
- 6.2 NIAA Authorised Officers receive and allocate PIDs relating to the NIAA in accordance with the PID Act and these procedures.

Responsibilities of NIAA Authorised Officers

- 6.3 NIAA Authorised Officers have a range of responsibilities under the PID Act, including:
- explaining the requirements of the PID Act to disclosers and potential disclosers;
 - explaining when a PID must be referred to another agency, person, or body, under another law (i.e. referral to the NACC if the disclosure could involve serious or systemic corrupt conduct);
 - receiving disclosures from current or former public officials and information referred from Supervisors;
 - deeming a person to be a public official to allow them to make a PID (if appropriate);

- making any preliminary inquiries necessary and assessing disclosures to determine whether the information could be considered to be a PID;
- determining whether personal work-related conduct included in the disclosure is disclosable conduct;
- allocating part or all of a PID to the NIAA and / or another agency that has agreed to handle the PID;
- deciding not to allocate a PID to any agency where satisfied on reasonable grounds that:
 - there is no reasonable basis on which the disclosure could be considered a PID; or
 - the conduct would be more appropriately investigated under another law or power;
- referring suspected systemic or serious corrupt conduct to the NACC;
- where appropriate, consenting to the allocation of a PID to the NIAA by an Authorised Officer of another agency;
- notifying the Commonwealth Ombudsman and other required persons of the allocation or decision not to allocate a disclosure;
- advising disclosers of any applicable designated publication restrictions of which the Authorised Officer is aware; and
- taking reasonable steps to protect public officials who belong to the NIAA from reprisal if the Authorised Officer suspects a relevant PID has been, may have been, is or proposed to be, or could be made or given.

Steps for NIAA Authorised Officers

Step 1: Initial consideration

In this section:

Receive information

Advise the discloser or a potential discloser

Ask the discloser for consent

Conduct preliminary inquiries

Conduct a risk assessment

Deemed public officials



Receive information

- 6.4 Where the [disclosure](#) is made verbally, the [Authorised Officer](#) must make a written record of the information, including as much detail as possible. The written record of the information should include the time and the date the information was disclosed. Where it is practicable to do so, the Authorised Officer should ask the discloser to endorse the written record of the disclosure (for example, by signing the written record or providing an email to confirm the written record is an accurate account of the disclosure).
- 6.5 Disclosures made to the NIAA [Principal Officer](#) may be referred to another NIAA Authorised Officer for action.

Advise the discloser or a potential discloser

- 6.6 Where the Authorised Officer has reasonable grounds to believe the discloser, or a potential discloser, may be unaware of what the [PID Act](#) requires for a disclosure to be considered an internal disclosure, the Authorised Officer must:
- inform the person that the disclosure could be treated as an internal disclosure under the PID Act;
 - explain to the person what the PID Act requires for a disclosure to be an internal disclosure;
 - explain when a PID must be referred to another agency, person or body, under another law (i.e. referral to the NACC);
 - advise the person of any orders or directions relating to designated publication restrictions of which the Authorised Officer is aware that may affect disclosure of the information; and
 - draw the discloser's attention to these procedures and the protections under the PID Act, and that it is open to the discloser to obtain independent legal advice on making a PID.

Ask the discloser for consent

- 6.7 Where the Authorised Officer has the discloser's contact details, the Authorised Officer must, before allocating the disclosure for investigation under the PID Act, ask the discloser whether they consent to the Authorised Officer giving the discloser's name and contact details, or anonymised contact details, to the [PID Investigator](#), the Ombudsman or any other agency. The Authorised Officer must make a written record of the discloser's response (if any).
- 6.8 Where a discloser does not respond within 7 days, the discloser is taken not to have consented to giving their name and contact details to the PID Investigator, Ombudsman or other agency (as applicable).

Conduct preliminary inquiries

- 6.9 The Authorised Officer must consider whether the information meets the criteria for an internal disclosure under the PID Act.
- 6.10 Under the PID Act, the Authorised Officer has the power to make any inquiries and obtain further information for the purposes of deciding which agency (if any) to which a disclosure is to be allocated.

6.11 Making inquiries for this purpose is not the same as conducting an investigation. The Authorised Officer's task is to quickly assess the disclosed information to ascertain if anything more is needed before they can make an informed decision about:

- whether or not the disclosure is an internal disclosure under the PID Act; and
- the agency (if any) to which the disclosure should be allocated for handling.

Deemed public officials

6.12 Where an Authorised Officer:

- receives a disclosure; and
- the information received does not, on first impression, satisfy them of the discloser's status as a public official,

the Authorised Officer may consider whether to exercise the power in section 70 of the PID Act to determine that the person is to be regarded as a public official. This can be done either at the request of the discloser or on the Authorised Officer's own initiative.

6.13 If a discloser specifically requests a section 70 determination, the Authorised Officer must make a decision on this request, and must inform the discloser of their decision and reasons by written notice, unless the discloser's contact details are not known by the Authorised Officer.

6.14 To the extent the Authorised Officer makes a determination under section 70 of the PID Act on their own initiative, and where the discloser's contact details are known to the Authorised Officer, a written notice of the determination should be provided to the discloser.

Step 2: Allocation decision

In this section:

Decision to allocate the disclosure

Conduct a risk assessment

Decision not to allocate the disclosure

Decision to allocate the disclosure

6.15 If the Authorised Officer is satisfied the disclosure meets the criteria for an internal disclosure, the Authorised Officer must decide whether or not to allocate the disclosure to one or more agencies for investigation.

6.16 The Authorised Officer must use their best endeavours to decide whether a disclosure is required to be allocated to one or more agencies for investigation within 14 days after the disclosure is made to the Authorised Officer.

6.17 In deciding the agency or agencies to which a disclosure will be allocated, the Authorised Officer must have regard to the principles that an agency should not handle the disclosure unless one or more of the following considerations apply:

- some or all of the disclosable conduct relates to that agency;
- another agency in the Department of the Prime Minister and Cabinet portfolio would be better able to handle the disclosure;
- if the agency is the Ombudsman, some or all of the conduct relates to an agency other than an intelligence agency or the intelligence functions of an agency prescribed by the PID Act;
- if the agency is the IGIS, some or all of the conduct relates to an intelligence agency or the intelligence functions of an agency prescribed by the PID Act;
- if the agency is a prescribed investigative agency (other than the Ombudsman or the IGIS), that agency has the power to investigate the disclosure other than under the PID Act; and
- any recommendations from the Ombudsman or the IGIS under s 55 of the PID Act about the allocation of the disclosure.

6.18 The Authorised Officer must not allocate a disclosure to another Commonwealth agency unless an Authorised Officer of that agency has consented to the allocation.

6.19 The Authorised Officer may reallocate the disclosure. This may happen if the extent or nature of a matter only becomes apparent during an investigation (for example, if the PID investigation shows that staff in another agency may be involved in wrongdoing). An authorised Officer may also reallocate the disclosure in response to a recommendation by the Ombudsman or the IGIS.

Conduct a risk assessment

6.20 Where the Authorised Officer has decided to allocate a disclosure to the NIAA, they must conduct a risk assessment of the risk that reprisal action might be taken against the discloser (see [Appendix A: Reprisal Risk Assessment](#)). The Authorised Officer should consider any information or assessment of risk provided by the discloser's Supervisor.

Decision not to allocate a disclosure

6.21 The Authorised Officer may decide not to allocate the matter 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; or
- the conduct disclosed would be more appropriately investigated under another law or power.

6.22 The basis on which an Authorised Officer could be satisfied of this may include:

- the disclosure was not made by a person who is, or was, a public official;
- the disclosure was not made to an Authorised Officer or Supervisor of the public official;



- the disclosure was not about disclosable conduct (i.e. it is personal work-related conduct);
- the person 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;
- the disclosure was not otherwise a PID within the meaning of the PID Act; and / or
- the alleged conduct would be more appropriately investigated under another law or power.

6.23 If the Authorised Officer decides the conduct disclosed would be more appropriately investigated under another law or power, the Authorised Officer must, as soon as reasonably practical, take reasonable steps to refer the conduct disclosed, or to facilitate its referral, for investigation under the other law or power.

6.24 Reasonable steps may include:

- arranging the transfer of documents to the appropriate agency;
- providing the discloser with contact details to make a complaint under the more appropriate law or power; and / or
- providing the discloser with any forms or background information necessary to make the complaint under that other law or power.

6.25 What constitutes reasonable steps to facilitate a referral will depend on the individual circumstances. There may be circumstances where a complaint under another law or power must be made by the discloser and therefore cannot be directly referred for investigation by the Authorised Officer.

Step 3: Inform relevant persons of decision

In this section:

[Inform the agency and Ombudsman](#)

[Inform the discloser](#)

Inform the agency and Ombudsman

6.26 Where the Authorised Officer allocates the handling of a disclosure to the NIAA or another agency, the Authorised Officer must give written notice to the Principal Officer of that agency as soon as practicable (generally within 14 days of making the decision). The written notice must cover:

- the allocation to the agency;
- the information that was disclosed;
- the conduct disclosed; and



- the discloser's name and contact details (where known to the Authorised Officer) only if the discloser has consented.
- 6.27 If the discloser does not consent to passing their name and contact details to the relevant agency (or agencies), the Authorised Officer may advise the receiving agency (or agencies) that the discloser did not consent.
- 6.28 Where the Authorised Officer allocates the handling of a disclosure to the NIAA or another agency, the Authorised Officer must inform the Ombudsman of the allocation as soon as practicable (generally within 14 days of making the decision). However, if the disclosure is allocated to an intelligence agency, or to an agency in relation to its intelligence functions, the Authorised Officer must inform the IGIS instead of the Ombudsman.
- 6.29 Where the Authorised Officer decides not to allocate a disclosure, the Authorised Officer must inform the Ombudsman of the decision and the reasons for the decision as soon as practicable (generally within 14 days of making the decision).

Inform the discloser

- 6.30 Where an Authorised Officer decides to allocate a disclosure, they must inform the discloser in writing of the allocation as soon as reasonably practicable (generally within 14 days of making the decision).
- 6.31 The Authorised Officer must give the discloser a copy of the notice to the agency allocated the handling of the disclosure, as soon as reasonably practicable.
- 6.32 Where an Authorised Officer decides not to allocate a disclosure, they must inform the discloser in writing as soon as reasonably practicable (generally within 14 days of making the decision):
- the disclosure is not to be allocated and the reasons for this decision
 - if the Authorised Officer has taken, or proposes to take, action to refer the conduct or facilitate its referral for investigation under another law or power, the details of such action; and
 - if the Authorised Officer does not propose to take action to refer the conduct, any other courses of action that might be available to the discloser under other laws of the Commonwealth.
- 6.33 The requirement for an Authorised Officer to inform the discloser does not apply where the discloser's contact details are not known by the Authorised Officer.

Step 4: Make a record

In this section:

[Record of decision](#)

[Record of communication to discloser](#)

Record of decision



6.34 When an Authorised Officer makes an allocation decision (including a decision not to allocate a disclosure), the Authorised Officer must keep an appropriate record of:

- the decision;
- the reasons for the decision;
- if the disclosure is allocated to another Commonwealth agency, the name of each agency and a copy of the agency's consent to the allocation; and
- if a notice of a NACC stop action direction is in place, whether it was reasonably practicable or appropriate for the discloser to be given a copy of that notice.

Record of communication to discloser

6.35 The Authorised Officer must keep appropriate records of whether the discloser was informed of the allocation decision and, if so, of:

- the date and time the discloser was notified;
- the means by which the discloser was notified; and
- the content of the notification.

7. Procedures for NIAA PID Investigators

In this section:

Role of the Principal Officer and PID Investigators

Responsibilities of PID Investigators

Steps for NIAA PID Investigators

Step 1: Provide initial information to the discloser

Step 2: Consider whether or not to investigate the disclosure

Step 3: Inform relevant persons of decision

Step 4: Conduct the PID investigation

Step 5: Prepare investigation report

Step 6: Provide report to discloser

Step 7: Recommendations

Role of the Principal Officer and PID Investigators

7.1 Under the PIC Act the [CEO](#) is the NIAA's [Principal Officer](#). The CEO has delegated the powers and functions of the Principal Officer under the PID Act under a written instrument of delegation to [PID Investigators](#). A copy of the instrument of delegation can be found on the NIAA Intranet or by contacting PID@niaa.gov.au.

Responsibilities of PID Investigators

7.2 The PID Investigators have a number of responsibilities, including:

- considering whether to exercise the discretion under the PID Act to not investigate a disclosure;
- conducting an investigation as they think fit, including obtaining information and making enquiries, in accordance with the [PID Act, PID Rules and PID Standard](#);

- ensuring procedural fairness is observed;
- preparing reports on investigations in accordance with the PID Act, PID Rules and PID Standard;
- ensuring suspected serious or systemic corruption uncovered during the PID investigation is referred to the NACC;
- taking reasonable steps to protect disclosers from reprisal actions, or threats of reprisal;
- notifying the Commonwealth Ombudsman and other required persons that the investigation is finalised, and
- ensuring appropriate action is taken in relation to recommendations arising from a PID investigation.

Steps for NIAA PID Investigators

Step 1: Provide initial information to the discloser

7.3 Where an [Authorised Officer](#) allocates the handling of a [PID](#) to the NIAA [with the discloser's contact details](#), the PID Investigator must, within 14 days after the PID is allocated, ensure the discloser is given information in writing about the PID Investigator's powers to decide:

- not to investigate the disclosure or not to investigate the disclosure further; or
- to investigate the disclosure under a separate investigative power.

7.4 The requirement for a PID Investigator to inform the discloser does not apply where it is not reasonably practicable to contact the discloser.

Step 2: Consider whether or not to investigate the disclosure

7.5 While the PID Act requires the PID Investigator to investigate a disclosure, the PID Act also allows the PID Investigator discretion not to investigate the matter in particular circumstances.

7.6 The PID Investigator may decide not to investigate the disclosure, or not to investigate further, if [any](#) of the following apply:

- the discloser is not a current or former public official (and a determination has not been made by an Authorised Officer under section 70 of the PID Act deeming the discloser to be a public official);
- the information does not, to any extent, concern serious disclosable conduct;
- the disclosure is frivolous or vexatious;
- the disclosure is the same or substantially the same as information previously disclosed under the PID Act, and a decision was previously made under section 48(1) to not investigate (or further investigate) the earlier disclosure;



- the disclosure is the same or substantially the same as another disclosure which has been, or is being, investigated under the PID Act;
- the disclosure is the same or substantially the same as a disclosure that is currently being investigated under another Commonwealth law, or executive power of the Commonwealth, and it would be inappropriate to conduct another investigation at the same time;
- the disclosure is the same or substantially the same as a disclosure that has been investigated under another Commonwealth law, or executive power of the Commonwealth, and the PID Investigator is reasonably satisfied that there are no further matters that warrant investigation;
- the discloser has advised the PID Investigator they do not wish the disclosure to be investigated or pursued, and the PID Investigator is reasonably satisfied that there are no matters that warrant investigation;
- the conduct disclosed would be more appropriately investigated under another law or power; or
- it is impracticable to investigate the disclosure because:
 - of the age of the information;
 - the discloser has not disclosed their name and contact details, or
 - the discloser has failed, or is unable, to give information or assistance requested by the investigator.

7.7 The PID Investigator must consider whether to not investigate, or not investigate further, the disclosure as soon as practicable after receiving the allocation from the Authorised Officer.

7.8 If the PID Investigator decides the conduct disclosed would be more appropriately investigated under another law or power, they must, as soon as reasonably practical, take reasonable steps to refer the conduct disclosed, or to facilitate its referral, for investigation under that other law or power.

Step 3: Inform relevant persons of decision

In this section:

Decision to not investigate or not investigate further

Where disclosure is to be investigated

Decision not to investigate or not investigate further

7.9 Where a PID Investigator decides not to investigate or not to investigate further, they must inform the discloser in writing as soon as reasonably practicable (generally within 14 days of the decision) of the following:

- the decision;



- the reasons for the decision; and
- if the PID investigator decides to refer the disclosure for investigation under another law or power:
 - the other law or power the conduct would be investigated under;
 - the agency, person or body to which the conduct has been, or is to be, referred; and
 - the steps taken, or proposed to be taken, to refer the conduct or facilitate its referral.

7.10 The PID Investigator may delete from the copy of the notice given to the discloser any material:

- that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982*
- having, or being required to have, a national security or other protective security classification; or
- containing intelligence information.

7.11 The requirement for a PID Investigator to inform the discloser does not apply where the discloser's contact details are not known by the PID Investigator.

7.9 Where the PID Investigator decides not to investigate or not to investigate further, the PID Investigator must inform the Ombudsman (or the IGIS, as applicable) of the decision as soon as practicable (generally within 14 days of making the decision).

7.10 Where a PID Investigator decides not to investigate, or not to investigate further, a disclosure the PID Investigator must keep an appropriate record of:

- the decision and the reasons for the decision; and
- if the discloser was notified of the decision not to investigate or not to investigate further:
 - the date and time the discloser was notified;
 - the means by which the discloser was notified; and
 - the content of the notification.

7.11 Where a PID Investigator decides not to investigate or not to investigate further, the PID Investigator is not required to prepare a PID investigation report.

Where disclosure is to be investigated

7.12 If the PID Investigator conducts an investigation, and they have been given the discloser's contact details, the PID Investigator must inform the discloser as soon as reasonably practicable that:

- the PID investigator is required to investigate the disclosure and the estimated length of the investigation; and
- the PID Act requires the investigation to be completed within 90 days of allocation unless an extension is granted by the Ombudsman.

Step 4: Conduct the PID investigation

In this section:

Starting point of a PID investigation

General principles

Additional procedures required in particular circumstances

Investigation under another Commonwealth law

Conducting interviews

Referral of information to police

Procedural fairness

Time limits

Starting point of a PID investigation

- 7.13 **The PID Investigator may conduct the PID investigation as he or she think fit.** This may include obtaining information from relevant people and making appropriate inquiries.
- 7.14 The starting point of a PID investigation is the information provided by the discloser. However, the PID Investigator may also consider whether the information they obtain during the PID investigation indicates there are other, or different, instances of disclosable conduct.
- 7.15 In conducting the PID investigation, the PID Investigator may adopt findings set out in reports of investigations or inquiries under other Commonwealth laws or executive powers, or other PID investigations under the PID Act.
- 7.16 The function of investigating a disclosure may be delegated to an independent investigator (internal or external to the NIAA, such as a contracted service provider). This may require the Principal Officer to issue an instrument of delegation. The Legal Services Branch can assist the PID Investigator to obtain an external independent investigator.

General principles

- 7.17 The following general principles will apply to the conduct of PID investigations:
- maintaining the confidentiality of the identity of the discloser and the process (to the extent required to appropriately conduct the investigation);
 - conducting the investigation in accordance with the principles of procedural fairness, including providing a person who is the subject of the investigation with a reasonable opportunity to respond or provide information;
 - if an interview is conducted:

- conducting it in a manner consistent with the PID Standard; and
- offering the interviewee the opportunity to have a suitable support person present during the interview,
- determining whether evidence is sufficient to prove a fact will be on the balance of probabilities; and
- reviewing the reprisal risk regularly, noting that risk of reprisal may change as a PID investigation progresses.

Additional procedures required in particular circumstances

7.18 To the extent they are relevant to a PID investigation, a PID Investigator must comply with the NIAA:

- Fraud Control Guidelines (including the NIAA Fraud Control Plan);
- procedures established under section 15(3) of the *Public Service Act 1999* (Code of Conduct procedures);
- Work Health and Safety Policy; and
- other NIAA policies or procedures,

in addition to complying with these procedures.

Investigation under another Commonwealth law

7.19 During the course of a PID investigation, the PID Investigator may consider if a different investigation should be conducted by the NIAA (or another body) under another law of the Commonwealth.

7.20 For example, if the PID Investigator considers there is evidence of a suspected breach of the Code of Conduct or fraud, it may be appropriate to conduct an investigation under the Code of Conduct procedures (made under section 15(3) of the *Public Service Act 1999*) or a fraud investigation (under section 10 of the *Public Governance, Performance and Accountability Rule 2014*).

7.21 Where the PID Investigator considers this to be the case, they can:

- finalise the PID investigation at the point where they are satisfied there is sufficient evidence to start a Code of Conduct or fraud investigation. This requires the PID Investigator to prepare a report under section 51 of the PID Act, record a decision or recommendation that a Code of Conduct or fraud investigation commence, and refer the matter for such an investigation; or
- complete the Code of Conduct or fraud investigation as part of the overall PID investigation, as indicated above under ‘Additional procedures required in particular circumstances’.

Conducting interviews

7.22 Interviews should be conducted in accordance with the PID Standard.

7.23 Subject to any restrictions imposed by another law of the Commonwealth, when conducting interviews as part of a PID investigation, an interviewee will be informed of the:

- identity and function of each individual conducting the interview;
- process of conducting a PID investigation;
- PID Investigator's requirement to investigate a disclosure to establish whether there has been disclosable conduct;
- authority of the PID Investigator under the PID Act to conduct the investigation;
- protections provided to witnesses under the PID Act relating to limitations on criminal or civil liability; and
- interviewee's duty:
 - if they are a public official - to use their best endeavours to assist the PID Investigator in the conduct of a PID investigation (subject to the public official's privilege against incriminating themselves or exposing themselves to a penalty);
 - not to do or say anything which would undermine the confidentiality of the investigation;
 - not to take or threaten 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.

7.24 The PID Investigator will ensure:

- an audio and / or visual recording of the interview is not made without the interviewee's knowledge;
- the interviewee is given an opportunity to make a final statement or comment or express a position at the end of the interview; and
- any final statement, comment or position by the interviewee is included in the record of the interview.

Referral of information to police

7.25 During a PID investigation, if the PID Investigator suspects on reasonable grounds that some of the information disclosed or obtained in the course of the investigation is evidence of the commission of a criminal offence, they may disclose the information to a member of an Australian police force. If the information relates to a criminal offence punishable for a period of at least two years, the PID Investigator must disclose the information to a member of an Australian police force.

Procedural fairness

7.26 Procedural fairness entitles the person against whom allegations are made to know the substance of allegations if it may result in an adverse finding being made about their conduct and have an opportunity to respond.

7.27 However, procedural fairness does not require that a person against whom allegations are made be advised as soon as the disclosure is received or an investigation is commenced.

7.28 There is no general right to know the identity of the discloser. However, it may be possible to guess the discloser's identity from the nature of the allegations. There may also be circumstances when the discloser's identity needs to be disclosed in order to provide a reasonable opportunity to respond.

7.29 Where the PID Investigator, in preparing the investigation report, proposes to:

- make a finding of fact; or
- express an opinion,

that is adverse to the discloser, the subject of the disclosure or another person, the PID Investigator must give that person a reasonable opportunity to comment on the substance of the proposed finding or opinion.

*NOTE The **above** paragraph [7.29] will not apply where the investigation does not make substantive findings or express adverse opinions but instead simply recommends or decides that further investigation should be taken.*

7.30 The PID Investigator must ensure a finding of fact in a report of an investigation under the PID Act is based on logically probative and relevant evidence.

Time limits

7.31 The PID Investigator has 90 days from the date the disclosure was allocated to complete the PID investigation.

7.32 It is possible to seek one or more extensions of time from the Ombudsman. A request to the Ombudsman for an extension of time must be made at least 21 days prior to the expiry of the investigation completion date. The application for an extension should include reasons why the investigation cannot be completed within the time limit, the views of the discloser (where it is reasonably practicable to obtain the views of the discloser) and an outline of action taken to progress the investigation.

7.33 A failure to complete an investigation within the specified time limit does not invalidate the investigation.

Step 5: Prepare PID investigation report

In this section:

Prepare the report

Content of the report

Prepare the report

7.34 Once the PID investigation is completed, the PID Investigator must prepare a report of the investigation. The report must be completed within 90 days after the disclosure was allocated, unless this period is extended by the Ombudsman.

Content of report



7.35 A report of a PID investigation must set out:

- the matters considered in the course of the PID investigation, including:
 - the disclosable conduct alleged by the discloser; and
 - any other disclosable conduct subsequently identified;
- the duration of the PID investigation;
- the PID Investigator's findings (if any);
- any action that has, is being or is recommended to be taken;
- any claims made about, and any evidence of, detrimental action taken against the discloser and the NIAA's response to those claims and that evidence.

7.36 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 how the evidence informed the findings; and
- set out any findings and recommendations made based on that evidence.

7.37 If the PID Investigator considers that information disclosed in the course of a PID investigation may be appropriately dealt with under another NIAA procedure or policy, they may recommend in the investigation report that this occur.

Step 6: Provide a copy of report to the relevant persons

7.38 Where the discloser's contact details are known to the PID Investigator, the PID Investigator must, within a reasonable time of preparing a report of a PID investigation, give a copy of the report to the discloser.

7.39 The PID Investigator may delete from the copy of the report given to the discloser any material:

- that is likely to enable the identification of the discloser or another person; or
- the inclusion of which would result in the copy being a document:
 - that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982 (FOI Act)*;
 - having, or being required to have, a national security or other protective security classification;
 - containing intelligence information; or
 - contravening a designated publication restriction.



- 7.40 The PID Investigator must, within a reasonable time of preparing a report of a PID investigation, give written notice of the completion of the investigation and a copy of the report to the Ombudsman (or the IGIS, as applicable). The PID Investigator may delete from the copy of the report given to the Ombudsman any material that is likely to enable the identification of the discloser or another person, or that would contravene a designated publication restriction.
- 7.41 The Ombudsman (or IGIS) may review the NIAA's handling of the disclosure, following receipt of written notice of completion of the investigation and copy of the investigation report. The Ombudsman may:
- obtain information or documents;
 - make enquiries as it sees fit; and
 - make recommendations in relation to the handling of the disclosure.

Step 7: Recommendations

- 7.42 If the PID investigation report contains recommendations, the recommendations must be referred to the Chief Operating Officer (**COO**) or another appropriately delegated person to ensure appropriate action is taken.

8. NACC and PID

Mandatory referrals to the NACC

8.1 A [PID Officer](#) who is handling an internal disclosure under the PID Act that raises a corruption issue under the NACC Act, must refer the corruption issue to the NACC if all of the following apply:

- the PID Officer became aware of the corruption issue in the course of exercising their powers or functions under the PID Act relating to allocating or investigating a disclosure; and
- the corruption issues concerns the conduct of a person who is, or was, a NIAA staff member at the time the conduct occurred; and
- the PID Officer suspects the issue could involve serious or systemic corrupt conduct.

If all of the criteria apply, the PID Officer must refer the corruption issue to the NACC as soon as reasonably practicable after becoming aware of the issue. These criterial are set out in section 35 of the NACC Act.

8.2 The mandatory referral obligation does not apply where:

- the PID Officer believes on reasonable grounds that the NACC Commissioner (or IGIS, if applicable) is already aware of the issue; or
- the NACC Commissioner has made a written determination that a referral is not required.

8.3 A PID Officer must provide all information relevant to the corruption issue in their possession or control at the time they make a mandatory referral to the NACC (or IGIS). This may include:

- the names of any public officials or other people or entities involved;
- details of the issue, such as dates and timeframes;
- how and when the PID Officer became aware of the issue;
- any supporting documents or materials; and
- any other information relevant to the corruption issue.

8.4 A PID Officer must provide the name and contact information of the discloser to the NACC (or IGIS) if that information is known and relevant to the corruption issue. The discloser does not have to give consent.

8.5 The PID Officer must notify the discloser if they make a mandatory referral to the NACC, as soon as reasonably practicable.

8.6 Making a mandatory referral to the NACC does not prevent a PID Officer from continuing to take action in relation to the disclosure under the PID Act. The PID Officer must continue to handle or deal with the internal disclosure in accordance with the PID Act, unless the NACC Commissioner has issued a stop action direction.

NACC stop action directions

8.7 The NACC Commissioner may direct the NIAA Principal Officer to stop taking action in relation to a public interest disclosure which involves a corruption issue. A stop action direction under the NACC Act may prevent:

- the allocation of some or all of a disclosure; and /or
- the investigation, or further investigation, of a disclosure.

8.8 A stop action direction overrides the operation of the PID Act, and can prevent the NIAA from taking particular action for a disclosure, or from taking any action at all.

8.9 The Authorised Officer or PID Investigator (as applicable) must notify the Ombudsman (or the IGIS, if applicable) if they are prevented from taking action under the PID Act by a stop action direction.

Notification requirements

8.10 If a stop action prevents the Authorised Officer from making an allocation decision, the Authorised Officer should consider if it is reasonably practicable and appropriate to provide the discloser with a notice in writing that they cannot proceed because of a stop action direction under the NACC Act.

8.11 The Authorised Officer may consider:

- the terms of the stop action direction, including whether the direction prevents the NIAA from providing notice to the discloser;
- whether the discloser is contactable in writing and, if so, the impact that a lack of notice would have on the discloser; and
- the impact that notifying a discloser about a stop action direction may have on any investigation conducted by the NACC.

8.12 If a stop action prevents the PID Investigator from investigating, or further investigating, a disclosure, the PID Investigator must provide the discloser with a notice in writing that they cannot proceed because of a stop action direction under the NACC Act.

8.13 The requirement for a PID Investigator to provide the discloser with written notice does not apply where it is not reasonably practicable to contact the discloser.



8.14 If a stop action direction prevents notifying a discloser about the stop action direction, the NIAA CEO (or their delegate) may consider whether to seek permission from the NACC Commissioner under the NACC Act to provide notice of the direction to the discloser.

A stop action direction stays in place until revoked

8.15 A stop action direction will stay in place until revoked by the NACC Commissioner. Once a stop action direction is revoked, a PID Officer (an Authorised Officer or PID Investigator) must continue to handle the disclosure in accordance with the PID Act.

8.16 The 14-day timeframe for the Authorised Officer to make an allocation decision starts again the day after the Authorised Officer becomes aware that a NACC stop action direction no longer applies.

8.17 The 90-day timeframe for the PID Investigator to complete a PID Investigation starts again the day after the PID Investigator becomes aware that a NACC stop action direction no longer applies.

9. Administration

Record keeping and privacy

- 9.1 Where there is a requirement to keep a record under this procedure, the record must be kept in an electronic form. If this is not possible, a suitable alternative should be discussed with Legal Services Branch.
- 9.2 Access to these records must be restricted to the following:
- Authorised Officer(s);
 - PID Investigator(s);
 - NIAA Legal Services Branch; and
 - other employees in the NIAA who require access in order to perform some function under the PID Act or for the purposes of another law of the Commonwealth.
- 9.3 All records must be retained by an Authorised Officer or PID Investigator until the matter is completed. The Legal Services Branch may provide support to the Authorised Officer and the PID Investigator to retain records where required.
- 9.4 The *Archives Act 1983*, *Privacy Act 1988* and FOI Act apply to all records created or received under this procedure.

Reporting

- 9.5 The Legal Services Branch will coordinate periodic reports to the NIAA CEO and NIAA COO about the number of disclosures and allocations made to the NIAA. These reports may include de-identified information, including:
- the progress of a PID investigation;
 - whether and why a decision not to investigate has been made under the PID Act;
 - whether information has been disclosed to a member of an Australian police force;
 - whether and why a request for an extension of time to investigate has been made; and
 - whether a request for an extension of time has been granted by the Ombudsman.
- 9.6 The Legal Services Branch will report to the Ombudsman as required by the PID Act.
- 9.7 Each NIAA Authorised Officer and PID Investigator will inform the Legal Services Branch of matters required to be reported under this section.

Definitions

Term	Explanation
Authorised Officer	<p>is defined under the PID Act and means the Principal Officer or an officer of the agency appointed in writing by the Principal Officer as an Authorised Officer for the purposes of the PID Act.</p> <p>Note: the NIAA Intranet has a list of the NIAA Authorised Officers.</p>
CEO	means Chief Executive Officer.
Disclosable Conduct	<p>is defined under the PID Act as conduct (including omitting to do an act) by an agency, a public official in connection with his or her position as a public official or an officer or employee of a contracted service provider, in connection with entering into or giving effect to a Commonwealth contract that:</p> <ul style="list-style-type: none"> • contravenes a law; • is corrupt; • perverts the course of justice; • is an abuse of public trust; • unreasonably endangers health and safety or the environment; • is misconduct relating to scientific research, analysis or advice; • results in wastage of public money or property; • is maladministration, including conduct that is unjust, oppressive or negligent; • is an abuse of a public official's position; and / or • if proved, would result in disciplinary action against a public official resulting in the termination of their engagement or appointment. <p>It does not matter when the disclosable conduct occurred.</p> <p>It does not matter whether the public official who carried out the alleged conduct has ceased to be a public official since the time the conduct is alleged to have occurred, but it is necessary that they carried out the conduct in connection with their position as a public official.</p> <p>Note 1: personal work-related conduct is not disclosable conduct unless it constitutes reprisal or is otherwise so significant it would undermine public confidence or has other significant implications for the NIAA.</p> <p>Note 2: As a general principle, an organisation which is party to a contract that prescribes the terms for grant funding is not a contracted service provider for the purposes of the PID Act.</p>
Discloser	is an individual who discloses information handled under the PID Act.
Disclosure	is information disclosed by a discloser.
MOP(S) Act employees	means staff employed under the <i>Members of Parliament (Staff) Act 1984</i> . MOP(S) Act employees are employed to assist a parliamentarian to carry out duties as a Member of Parliament.



Term	Explanation
NACC	means the National Anti-Corruption Commission.
NACC Act	means the <i>National Anti-Corruption Commission Act 2022</i> .
NACC Disclosure	has the same meaning as under the NACC Act.
PID Act	means the <i>Public Interest Disclosure Act 2013</i> .
PID Investigation	means an investigation conducted under the PID Act.
PID Investigator	means the Principal Officer or a person delegated in writing by the Principal Officer to investigate a disclosure for the purposes of the PID Act.
PID Officer	means an Authorised Officer or PID Investigator.
PID Rules	means the <i>Public Interest Disclosure Rules 2019</i> .
PID Standard	means the <i>Public Interest Disclosure Standard 2013</i> .
Principal Officer	is defined under the PID Act and includes the head of an executive agency. The Principal Officer of the NIAA is the NIAA CEO.
Public interest disclosure, PID	<p>is a disclosure:</p> <ul style="list-style-type: none"> • made by a current or former public official (the discloser); • to an Authorised Officer or a Supervisor of the discloser; <p>which includes 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.</p> <p>A disclosure is also a public interest disclosure if the disclosure is:</p> <ul style="list-style-type: none"> • made by a current or former public official (the discloser); and • is also a NACC disclosure, <p>that tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct.</p>
Public Official	<p>is defined under the PID Act and includes:</p> <ul style="list-style-type: none"> • an APS or Commonwealth employee (ongoing, non-ongoing and casual); • a member of the Australian Defence Force; • an appointee of the Australian Federal Police; • Parliamentary Service employees; • a director or staff member of a Commonwealth company; • A statutory office holder or other person who exercises powers under a Commonwealth law; • individuals who are contracted service providers for a Commonwealth contract (including subcontractors to that contract); and



Term	Explanation
	<ul style="list-style-type: none"> officers or employees of a contracted service provider for a Commonwealth contract who provide services for the purposes of the Commonwealth contract.
Supervisor	is defined under the PID Act and means, in relation to a person who makes a disclosure, a public official who supervises or manages the person making the disclosure.

Resources

9.8 The PID Act is administered by the Commonwealth Ombudsman. More information about the scheme is available on the Commonwealth Ombudsman website: <http://www.ombudsman.gov.au>.

9.9 More information about these procedures can be obtained by contacting pid@niaa.gov.au.

Related policies

9.10 Related NIAA policies:

- NIAA Fraud Control Plan and any rules relating to fraud
- NIAA Procedures for determining a breach of the APS Code of Conduct and imposition of sanctions
- NIAA procedures relating to the NACC

Review

9.11 This procedure should be reviewed every two years by the Legal Services Branch.

Version control

Version	Description	Author	Date
1	NIAA PID Procedures	Legal Services Branch	2 August 2022
2	NIAA PID Procedures	Legal Services Branch	1 November 2023

Appendix A: Reprisal Risk Assessment

In this section:

Reprisal Risk Assessment

Step 1: Conduct a reprisal risk assessment

Step 2: If necessary, develop a reprisal risk mitigation strategy

Reprisal Risk Assessment

- A.1 The Principal Officer must take reasonable steps to protect public officials who belong to the NIAA from detriment, or threats of detriment, relating to a PID. This obligation extends beyond the officials making PIDs. The Principal Officer is also required to protect witnesses and other officials suspected to have made a PID, and officials who are the subject of allegations.
- A.2 It is an offence under the PID Act to take reprisal action against a person who has made or intends to make a PID.

What is reprisal?

- A.3 Reprisal occurs if someone causes, by an act or omission, any detriment to another person because they believe or suspect that person has made or may make a PID, or could make a PID.

What is not reprisal?

- A.4 Administrative action that is reasonable to protect a discloser from detriment is not a reprisal. For example, where a person has made a PID in relation to practices in their immediate work area, it may be appropriate to transfer them to another work area to ensure they are not harassed or victimised. It is important to ensure there is no perception that they are being punished for having made a PID.
- A.5 Making a PID also does not exclude the discloser from reasonable management action for any unsatisfactory performance or wrongdoing on their part – such action is not a reprisal.

What is detriment?

- A.6 Detriment includes any disadvantage to a person, including dismissal, injury in their employment, discrimination between them and other employees or alteration of their position to their disadvantage. For example, it could include an omission or action (or threat of action) that results in:
- a physical or psychological injury, including a stress-related injury;
 - intimidation, harassment or victimisation;

- loss or damage to property; or
- disadvantage to a person's career (for example, denying them a reference or a promotion without appropriate reasons).

Step 1: Conduct a reprisal risk assessment

- A.7 Where an Authorised Officer is considering allocating a PID, they must conduct an assessment of the risk of reprisal action being taken against the discloser based on the information set out in this Appendix, and having regard to any assessment of reprisal risk provided by the discloser's supervisor.
- A.8 The Authorised Officer may consult with or obtain information from other people involved in the discloser's workplace or another area of the NIAA with the appropriate skills and experience to complete a risk assessment.
- A.9 The PID Investigator should regularly review the reprisal risk assessment, noting that the risk of reprisal may increase or change as a PID investigation progresses.
- A.10 The following framework is suggested for conducting a reprisal risk assessment. It entails four steps:
- **Identify** – have there been reprisals in the workplace or is there the potential for reprisals to occur?
 - **Assess** - what is the likelihood and consequence of reprisals?
 - **Control** - what strategies should be put in place to prevent or contain reprisals?
 - **Monitor and review** - have the strategies been implemented and were they effective?
- A.11 In assessing the risk of reprisal action, the following risk matrix may assist:

	Consequences			
Likelihood	Minor	Moderate	Major	Severe
Almost Certain	Medium	High	Extreme	Extreme
Likely	Medium	Medium	High	Extreme
Possible	Low	Medium	High	High
Unlikely	Low	Low	Medium	High
Rare	Low	Low	Medium	Medium



Term	Explanation
Minor	Occasional or one-off action that is likely to have a relatively minor adverse effect on the person (for example, occasional exclusion of the person from a social activity)
Moderate	Repeated action which is likely to have an adverse effect on the person (for example, routinely failing to 'CC' the person on work-related emails which the person has a genuine business need to know)
Major	Sustained or one-off action which has a significant impact on the person (for example, consistently excluding the person from team discussion or imposing negative performance assessment on the person without reasonable cause and supporting evidence)
Severe	Action which is likely to have a very severe impact on the person (for example, physical violence or the denial of a promotion opportunity without reasonable cause)

Assessing likelihood of potential reprisals

A.12 When considering the likelihood of reprisal being taken against a discloser, the Authorised Officer should take into account all relevant factors, based on the available information, including (where relevant):

- the likelihood of the discloser being identified, which may involve consideration of:
 - the size of the work area in which the discloser is located; 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 number of people who are aware of the disclosure or are likely to become aware of the disclosure (for example, through participation in the investigation as witnesses);
- the culture of the workplace;
- whether any specific threats against the discloser have been received;
- whether there are circumstances that will make it difficult for the discloser not to discuss the disclosure in the workplace;
- whether there are allegations about individuals in the disclosure;
- 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.



Assessing seriousness of potential reprisals

A.13 In considering the seriousness of any potential reprisal against a discloser, the Authorised Officer should take into account all relevant factors, based on the available information, including (where relevant):

- 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;
- whether the discloser is employed on a full-time, part-time or casual basis;
- whether the alleged wrongdoing was directed at the discloser; and
- the relative positions of the discloser and the person whose alleged wrongdoing is the subject of the disclosure.

A.14 When conducting the risk assessment, and where consistent with protecting the discloser's confidentiality, the Authorised Officer may ask the discloser if they fear reprisal action, who they might fear a reprisal from, and may also speak to the discloser's supervisor or manager for the purpose of mitigating the risk of reprisal.

A.15 Additional resources that may assist the Authorised Officer in conducting a reprisal risk assessment are available on the [Ombudsman website](#).

Step 2: If necessary, develop a risk mitigation strategy

A.16 Where necessary, the Authorised Officer should develop a strategy to mitigate the risk of reprisal action being taken against the discloser.

A.17 The strategy will depend on the circumstances of the risk. It may include actions such as:

- limiting the opportunity for interaction between the discloser and relevant persons (taking into account operational requirements);
- implementing a process of regularly checking-in with the discloser or nominating a person for the discloser to contact if they have concerns reprisal action may be taken; and
- arranging for the discloser to work from a different area within the workplace or approving remote / teleworking (with the consent of the discloser). This is only likely to be appropriate in cases involving major or severe reprisal risk.