



Procedures for dealing with Public Interest Disclosures

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The contents of this document are OFFICIAL.

Document control

Table 1 – Document control

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1. Purpose

This document introduces the National Disability Insurance Agency's (NDIA) procedures for dealing with public interest disclosures (PIDs). It is made under section 59(3) of the *Public Interest Disclosure Act 2013* (PID Act).

This document is for [public officials](#) who make, or are considering making, PIDs relating to the NDIA. Further internal guidance to support the making of and dealing with PIDs is set out in the following separate documents:

- Guide for public officials
- Guide for supervisors
- Guide for authorised officers
- Guide for PID investigators.

These procedures should be read in conjunction with the following:

- the PID Act
- the *National Anti-Corruption Commission Act 2022* (NACC Act)
- *Public Interest Disclosure Standard 2013* (PID Standard)
- *Public Interest Disclosure Rules 2019*.

If any part of these procedures, including the above guides, is inconsistent with the above legislation, the legislation will prevail.

2. Background to the PID Act

[Public officials](#) can raise concerns about wrongdoing in the Commonwealth public sector under the PID Act. A concern raised under the PID Act is a 'public interest disclosure' or 'PID'.

At the NDIA, PIDs can be made to a [supervisor](#) or an [authorised officer](#). In some circumstances, they can be made directly to the Commonwealth Ombudsman and directly to the National Anti-Corruption Commission (NACC). PIDs can be made verbally or in writing. [Public officials](#) can identify themselves when making a PID, make a PID anonymously, or use a pseudonym to make a PID.

The NDIA has 90 days to investigate PIDs that are allocated to it. The Commonwealth Ombudsman can extend the 90 days. In some circumstances, the NDIA may decide not to investigate a PID.

Generally, people who make PIDs will be protected from:

- [reprisal](#), such as dismissal, harassment, and harm or injury to a person
- the exposure of their identity as a person who made a PID
- civil, criminal and/or administrative liability.

Our Commitment

- We foster a culture that encourages people to report wrongdoing.
- We support people who make PIDs and take part in investigations.
- We take appropriate action in response to recommendations made in investigation reports.
- We recognise that non-compliance with the PID Act is detrimental to the discloser and our reputation.

3. Ways to make a PID

There are several ways to make a PID:

- internally – an [‘internal disclosure’](#) is the most common type of PID and generally involves a [public official](#) making a disclosure to their [supervisor](#), an [authorised officer](#), or the Commonwealth Ombudsman
- externally – an [‘external disclosure’](#) can be made in limited circumstances only
- in an emergency – an [‘emergency disclosure’](#) can be made in exceptional circumstances only
- to an Australian legal practitioner – a [‘legal practitioner disclosure’](#) can be made to help a [public official](#) make another type of PID
- to the NACC – a [‘NACC disclosure’](#) can be made in certain circumstances.

This document does not deal with the procedure for making [external disclosures](#), [emergency disclosures](#), [legal practitioner disclosures](#), or [NACC disclosures](#). [Public officials](#) considering making these types of disclosures should consider getting their own independent legal advice (see [3.4](#)). Protections for disclosers (see [6](#)) will not apply to disclosures that are not made in accordance with the PID Act.

3.1 Internal disclosures

A disclosure made under the PID Act within an agency is called an ‘internal disclosure’. This is the most common type of PID.

In summary, an internal disclosure:

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- is made by a person who is a [public official](#), used to be a [public official](#), or has been [deemed a public official](#)
- is received by an [authorised officer](#), the discloser's [supervisor](#), or, in certain circumstances, the Commonwealth Ombudsman
- contains information that tends to show, or that the person believes on reasonable grounds tends to show, one or more instances of [disclosable conduct](#)
- is not made in the course of a [public official](#) performing their ordinary functions as a [public official](#).

When an [authorised officer](#) receives a disclosure from a [public official](#) or their [supervisor](#), they will decide whether to allocate it to a Commonwealth agency or agencies for investigation. A disclosure is not an internal disclosure until an [authorised officer](#) has decided that the requirements of the PID Act have been met. If the [public official](#) does not know about the requirements of the PID Act, the [authorised officer](#) will give them more information about PIDs.

If the [authorised officer](#) decides to allocate the disclosure to a Commonwealth agency or agencies, they will tell the [principal officer](#) of the agency or agencies, the Commonwealth Ombudsman, and the [public official](#) who made the internal disclosure. The agency or agencies will then have 90 days to investigate it. The 90 days can be extended by the Commonwealth Ombudsman.

If the [authorised officer](#) decides not to allocate the disclosure, they will tell the Commonwealth Ombudsman and the [public official](#) and give reasons for their decision.

3.2 External disclosures (limited circumstances)

A [public official](#) may disclose information to any person other than a foreign public official in limited circumstances only. This is called an 'external disclosure'.

In general, a [public official](#) may make an external disclosure if:

- they have already made an [internal disclosure](#) about the same information, and
- the information tends to show, or the [public official](#) believes on reasonable grounds that the information tends to show, one or more instances of [disclosable conduct](#), and
- it is not, on balance, contrary to the public interest, and
- the investigation of the [internal disclosure](#) was not completed in time, or

- the [public official](#) reasonably believes that the investigation of the [internal disclosure](#) or the response to the investigation of the [internal disclosure](#) was inadequate.

An external disclosure must not include intelligence information or sensitive law enforcement information. No more information than is reasonably necessary to identify one or more instances of [disclosable conduct](#) must be disclosed.

[Public officials](#) should consider getting their own independent legal advice before making an external disclosure (see [3.4](#)).

Remember

A [public official](#) who is unhappy about the way the NDIA has handled an [internal disclosure](#) can complain to the Commonwealth Ombudsman. More information about making a complaint to the Commonwealth Ombudsman is available at www.ombudsman.gov.au.

3.3 Emergency disclosures (exceptional circumstances)

A [public official](#) may disclose information to any person other than a foreign public official in exceptional circumstances only. This is called an ‘emergency disclosure’.

In summary, a [public official](#) can make an emergency disclosure if:

- they reasonably believe that the information they intend to disclose concerns a substantial and imminent danger to the health or safety of one or more people or to the environment, and
- they only disclose the information that is necessary to alert the recipient of the substantial and imminent danger, and
- if they have not previously made an [internal disclosure](#) about the same information, there are exceptional circumstances justifying their failure to make an [internal disclosure](#), or
- if they have made an [internal disclosure](#) that is still under investigation, there are exceptional circumstances justifying their decision to make an emergency disclosure.

An emergency disclosure must not include intelligence information or sensitive law enforcement information.

[Public officials](#) should consider getting their own independent legal advice before making an emergency disclosure (see [3.4](#)).

3.4 Legal practitioner disclosures

The PID Act allows [public officials](#) to get legal advice about making a PID from a legal practitioner. This is called a 'legal practitioner disclosure'.

[Public officials](#) who make legal practitioner disclosures will generally have the protections of the PID Act when they comply with the following requirements:

- the information is disclosed to an Australian legal practitioner
- the disclosure is made in order to obtain advice or assistance from the legal practitioner in relation to having made, or proposing to make, a PID
- the information does not consist of, or include, intelligence information
- the legal practitioner holds the appropriate level of security clearance to view the information associated with the disclosure.

[Public officials](#) should take care to ensure that the legal practitioner holds the appropriate security clearance before making a legal practitioner disclosure.

It is an offence for a legal practitioner to disclose to another person the information that a [public official](#) discloses to them, or the use that information for any purpose other than providing advice or assistance to the [public official's](#) actual or proposed [internal disclosure](#), [external disclosure](#), [emergency disclosure](#), and/or [NACC disclosure](#).

3.5 NACC disclosures (corruption issues)

In summary, a [public official](#) can make a disclosure directly to the NACC called a 'NACC disclosure' if the information they have:

- tends to show, or the [public official](#) believes on reasonable grounds that the information tends to show, one or more instances of [disclosable conduct](#), and
- is about a [corruption issue](#).

If a [public official](#) makes a NACC disclosure, this does not prevent them from making another type of PID, such as an [internal disclosure](#). More information about NACC disclosures is available on the [NACC website](#).

4. Making an internal disclosure

Current and former [public officials](#) can make an [internal disclosure](#):

- in person to their [supervisor](#) or one of the NDIA's [authorised officers](#), including through a videoconference meeting such as Microsoft Teams
- by email to PID@ndis.gov.au (all emails to the PID inbox are treated as confidential), or
- verbally by calling +61 2 6233 9200 and leaving a confidential voice message.

Concerns should be raised as soon as possible – the sooner concerns are raised, the easier it is for the NDIA to act.

[Public officials](#) should include as many key details and supporting information as possible to support their disclosure. The following information should be included, so far as is practicable, with their disclosure:

- their name and contact details (unless they do not wish to be identified)
- a description of the wrongdoing
- the name/s of the person/s involved
- when and where the wrongdoing occurred
- how they became aware of the wrongdoing
- whether someone else has reported the wrongdoing before
- whether they are concerned about [reprisal](#) because of making a disclosure.

They should not include speculation, personal attacks, and emotive language.

If the [public official](#) works in a role where they usually share information about wrongdoing with their [supervisor](#) or an [authorised officer](#), they should tell their [supervisor](#) or the [authorised officer](#) that they are making an [internal disclosure](#). Examples of roles this may apply to include internal fraud control, case management and protective security roles. This will ensure that it is clear that the [public official](#) is making an [internal disclosure](#) rather than performing a regular part of their role.

If the person who wants to make an [internal disclosure](#) is not a [public official](#) but would like to be [deemed a public official](#), they should ask the [authorised officer](#).

Remember

[Public officials](#) can make PIDs anonymously or using a pseudonym. However, if they do not give their contact details, the NDIA may not be able to investigate the information.

5. Investigating internal disclosures

The NDIA must investigate [internal disclosures](#) that are allocated to it except in limited circumstances. The NDIA has 90 days to investigate [internal disclosures](#) that are allocated to it. This timeframe can be extended by the Commonwealth Ombudsman.

The NDIA conducts investigations in accordance with general administrative law principles, such as procedural fairness and acting free from bias, and the requirements of the PID Act and PID Standard. An investigation may involve:

- obtaining documents
- interviewing the person who made the [internal disclosure](#)
- interviewing witnesses including any alleged wrongdoers
- writing a report of the investigation
- giving a copy of the report to the Commonwealth Ombudsman and the [public official](#) who made the [internal disclosure](#).

In some cases, the NDIA may refer [internal disclosures](#) to another agency or body, such as the NACC. For example, [internal disclosures](#) must be referred to the NACC if a [PID officer](#) becomes aware of a [corruption issue](#) that they suspect could involve [corrupt conduct](#) that is serious or systemic. The NDIA will keep investigating [internal disclosures](#) referred to the NACC unless:

- a decision is made not to investigate it or not to investigate it further under the PID Act
- the NACC issues a [stop action direction](#).

Remember

[Public officials](#) who make PIDs should not investigate their concerns themselves as this may hinder future investigation.

6. Protections for disclosers and witnesses

[Public officials](#) who make [internal disclosures](#), [external disclosures](#), [emergency disclosures](#), and [legal practitioner disclosures](#) and people who provide assistance in relation to the investigation of these disclosures, such as witnesses, are protected under the PID Act. [Public officials](#) who make [NACC disclosures](#) and people who provide assistance in relation to the investigation of these disclosures, such as witnesses, are protected under both the PID Act and the NACC Act.

These protections include:

- confidentiality and protection of identity except in certain limited circumstances
- immunity from civil, criminal, and administrative liability
- support and protection from [reprisal](#) action, and recourse to court for remedies for [reprisal](#) action.

These protections will not apply if the [public official](#) making the PID:

- does not comply with the requirements for making an [internal disclosure](#), [external disclosure](#), [emergency disclosure](#), [legal practitioner disclosure](#) and/or [NACC disclosure](#)
- contravenes a designated publication restriction by making a PID without reasonable excuse, or
- knowingly discloses false or misleading information.

The protections will not protect a [public official](#) making a PID from the consequences of their own wrongdoing. They also do not prevent a Commonwealth agency from taking reasonable administrative action in respect of a [public official](#) who makes a PID, such as performance management processes.

6.1 Confidentiality of PID processes

The NDIA makes every reasonable effort to protect the identity of [public officials](#) who make PIDs and investigative processes by:

- facilitating the making of anonymous and pseudonymous [internal disclosures](#), where possible
- limiting the number of people in the NDIA who are aware of the identity of [public officials](#) who have made PIDs
- regularly reminding people in the NDIA who are aware of the identity of [public officials](#) who have made [internal disclosures](#) that they must keep that information confidential and that unauthorised use or disclosure may be a criminal offence
- assessing whether any person who is aware of the identity of [public officials](#) who have made [internal disclosures](#) may have a motive to take [reprisal](#) or impede the investigation and regularly monitoring these assessments
- ensuring that [public officials](#) who have made [internal disclosures](#) can communicate with [authorised officers](#) and delegates of the [principal officer](#) without alerting other people in the NDIA
- where appropriate, asking [public officials](#) who have made [internal disclosures](#) for their consent to reveal their identity to certain people

- complying with the PID Act in respect of handling identifying information and the authorised sharing of information between agencies
- complying with the *Privacy Act 1988*, including the Australian Privacy Principles, and the NDIA's Privacy Policy in respect of the handling of personal information
- complying with the NDIS Act in respect of handling protected Agency information.

Despite all reasonable efforts to support confidentiality of PID processes, it is not always possible to guarantee that the identity of [public officials](#) who make PIDs will be protected. Sometimes, through the course of an investigation, the identity of [public officials](#) who make PIDs may become apparent.

Remember

[Public officials](#) who make PIDs should not discuss the details with anyone who does not have a need to know about it. These discussions may not be protected by the PID Act.

6.2 Protection against reprisal and reprisal risk assessment

The NDIA makes every reasonable effort to protect people who make, may make, propose to make, or could make PIDs from [reprisal](#). The NDIA also makes every reasonable effort to protect witnesses to PID investigations from [reprisal](#).

An initial reprisal risk assessment is done as soon as practicable after an [internal disclosure](#) is received by one of the NDIA's [authorised officers](#). If the [internal disclosure](#) is allocated to the NDIA, a reprisal risk assessment is done as soon as practicable after allocation. Reprisal risk assessments are monitored and reviewed regularly. Wherever practicable and appropriate, [public officials](#) who make [internal disclosures](#) are consulted during the development and review of risk reprisal assessments.

If a person who has made an [internal disclosure](#) or who is involved in the investigation of an [internal disclosure](#) believes that [reprisal](#) is being taken against them, or someone has threatened to take [reprisal](#) against them, they should immediately report it to an [authorised officer](#), their [supervisor](#), PID@ndis.gov.au or +61 2 6233 9200. If a report of [reprisal](#) is received, the NDIA will take all reasonable steps to protect the person and investigate the alleged [reprisal](#).

If a person who has made a [NACC disclosure](#) or who is involved in the investigation of a [NACC disclosure](#) believes that reprisal is being taken against them, or someone has threatened to take [reprisal](#) against them, they should immediately report it to the NACC.

If there is an emergency, the person should call Triple Zero (000).

Remember

The NDIA does not tolerate any [reprisal](#) action against [public officials](#) who make PIDs, including [NACC disclosures](#), or against any other person because of a belief that a PID, including a [NACC disclosure](#), may have been made or could be made. Every allegation of [reprisal](#) made to the NDIA will be taken seriously and responded to.

7. Keeping records

The NDIA keeps appropriate written records of actions taken under the PID Act. This includes records of:

- decisions to allocate and re-allocate [internal disclosures](#) to one or more Commonwealth agencies, including the decision, the reasons for decision, and any consent given by an authorised officer in the agency to which the disclosure is allocated
- decisions not to allocate [internal disclosures](#) to any Commonwealth agency, including the decision and the reasons for decision
- [stop action directions](#) under the NACC Act, including details of the direction such as when it was made and when it no longer applies.

Appropriate written records are also kept of whether notices relating to the above matters were given to the person who made the disclosure, and if they were, the day and time that the notice was given, the means by which the notice was given, and the matters included in the notice. If a notice was not given to the person who made the disclosure, appropriate written records are kept of the reasons for not giving the notice, such as if it was not reasonable or appropriate for the person who made the disclosure to be given a copy of the notice.

All records are marked in accordance with the Australian Government's Protective Security Policy Framework Classification System and stored in the appropriate storage container.

8. Definitions

Some terms in this document have defined meanings as set out in Table 2.

Table 2 – Definitions

Term	Definition
Authorised officer	<p>Authorised officers are public officials who are responsible for receiving internal disclosures. The names of the NDIA’s authorised officers are on the National Disability Insurance Scheme website.</p>
Corruption issue and corrupt conduct	<p>A corruption issue is an issue of whether a person has engaged, is engaging, or will engage in corrupt conduct. In summary, a person engages in corrupt conduct if they are a public official and they:</p> <ul style="list-style-type: none"> • breach public trust • abuse their office as a public official and/or • misuse information that they have gained in their capacity as a public official. <p>Any person – whether or not they are a public official – engages in corrupt conduct if they do something, or try to do something, that adversely affects or that could adversely affect a public official’s honest and impartial exercise of powers or performance of official duties.</p>
Deemed public official	<p>In some cases, an authorised officer can deem a person to be a public official so that the person can make an internal disclosure. This might happen if the authorised officer believes, on reasonable grounds, that a person has information that concerns disclosable conduct. For example, if a person has ‘inside information’ about serious wrongdoing.</p>
Disclosable conduct	<p>In summary, disclosable conduct is conduct that is engaged in by an agency, a public official, or a</p>

Term	Definition
	<p>contracted service provider for a Commonwealth contract that:</p> <ul style="list-style-type: none"> • is illegal or corrupt • results in the waste of money or property • results in unreasonable danger or risk to health and safety, or • results in danger, or an increased risk of danger, to the environment. <p>The PID Act says that some conduct may not be disclosable conduct, including:</p> <ul style="list-style-type: none"> • personal work-related conduct, such as bullying and harassment • conduct related to courts, tribunals and Parliament • disagreement with government policy or expenditure related to those policies • activities of grant recipients.
PID officer	Under the NACC Act, a PID officer is a staff member of a Commonwealth agency who has certain functions and powers under the PID Act. Examples include authorised officers and principal officers.
Principal officer	The principal officer of an agency is the agency head. The principal officer of the NDIA is the Chief Executive Officer (CEO) of the NDIA.
Public official	<p>In the NDIA, public officials include:</p> <ul style="list-style-type: none"> • current and former Australian Public Service (APS) employees • people who are or were employed by the Commonwealth and perform or performed duties for the NDIA

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Term	Definition
	<ul style="list-style-type: none"> • people who are or were employees of a contracted service provider that provides or provided services to the NDIA • people who have been deemed to be public officials by an authorised officer.
Reprisal	<p>A person takes reprisal against another person if they cause, or threaten to cause, any detriment to that person because they believe or suspect that that person made, may have made, or proposes to make a PID. Examples of reprisal include:</p> <ul style="list-style-type: none"> • dismissing an employee • injuring an employee in their employment • altering an employee’s position to their disadvantage • discriminating between an employee and other employees • harassing or intimidating a person • harming or injuring a person, including psychosocial harm • damaging a person’s property • damaging a person’s reputation • damaging a persons’ business or financial position • any other damage to a person. <p>Reasonable administrative action to protect a person from detriment is not reprisal.</p>
Stop action direction	<p>A stop action direction is an instruction from the NACC to a Commonwealth agency to stop taking action in relation to a corruption issue. A stop action direction may prevent a Commonwealth agency from taking action in relation to a particular issue, or from taking any action at all.</p>

Term	Definition
Supervisor	A supervisor is a public official who supervises or manages the public official making the internal disclosure. In the NDIA, a public official's supervisor will be their direct supervisor and every person up the reporting line from that public official.