



TITLE

Public Interest Disclosure Policy

SUMMARY OF POLICY

This policy outlines how public interest disclosures under the *Public Interest Disclosure Act 2013* are made and handled within the Federal Court of Australia Entity.

EMPLOYEES AFFECTED

All staff

CONTACT OFFICER(S)

Executive Director People, Culture and Communications.

DATE OF EFFECT

14 September 2021

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1. Purpose

The purpose of this policy is to outline how public interest disclosures under the *Public Interest Disclosure Act 2013* (Cth) (PID Act) are made and handled within the Federal Court of Australia entity (the entity). The policy applies to all officers and staff of the Federal Court (FCA), the Federal Circuit and Family Court of Australia (FCFCOA) and the National Native Title Tribunal (NNTT).

The PID Act:

- establishes a framework to encourage and facilitate the reporting of wrongdoing by public officials in the Commonwealth public sector;
- ensures that Commonwealth agencies will properly investigate and respond to reports of serious wrongdoing by Commonwealth public officials;
- provides protection (including civil and criminal immunity) to public officials who report, in accordance with the PID Act, allegations of wrongdoing in the Commonwealth public sector.

The PID Act and this policy complement other measures the courts and the NNTT have in place to maintain the highest standards of ethical and accountable conduct.

Officers and staff are encouraged to use this policy to report any wrongdoing they encounter within the entity, including the FCA, the FCFCOA or the NNTT.

2. Application of the PID Act

The PID Act applies to 'public interest disclosures' made by public officials. 'Public officials' for the purposes of the PID Act covers persons working in, or with a relevant connection to, the Commonwealth public sector. This includes all APS entity heads and APS employees. Individual contracted service providers (contractors) to the Commonwealth and Commonwealth authorities are also considered public officials, and the employees of any contractors to the Commonwealth or a Commonwealth authority are public officials if they provide services for the purposes of the contract.

3. What is a Public Interest Disclosure?

A disclosure of information is considered a public interest disclosure (PID) if the disclosure is made by a current or former public official and the information tends to show, or the official believes on reasonable grounds that the information tends to show, one or more instances of 'disclosable conduct'.

'Disclosable conduct' includes a wide range of wrongful conduct engaged in by an agency, public official in connection with his or her position as a public official, or contractor in connection with entering into or giving effect to their contract with the Commonwealth or a Commonwealth authority. It includes (but is not limited to) conduct that is:

- corrupt;
- contravenes a law;
- perverts the course of justice;
- results in the wastage of public funds or property;

- an abuse of public trust;
- unreasonably endangers the health and safety of others;
- maladministration including conduct that is unjust, oppressive or negligent.

Disclosable conduct does not include disagreement with government policy, action or expenditure. It does not include judicial conduct or the conduct of court or tribunal staff exercising court, tribunal or statutory powers, or powers of a judicial nature. In addition, it does not include any other conduct of, or relating to a court or tribunal, unless those matters are of an administrative nature and do not relate to the management or hearing of matters before the court or tribunal. Disclosable conduct does not include disagreement with official court or tribunal policies.

There are four types of PIDs under the PID Act: internal disclosures, external disclosures, emergency disclosures and legal practitioner disclosures. Generally public officials should make an 'internal disclosure' in the first instance (either to their immediate supervisor or manager or to an 'authorised officer').

In certain circumstances, a disclosure may be made as an external disclosure to an outside person or body, such as the Commonwealth Ombudsman.

4. To whom can a PID be made?

All officers and staff can make a disclosure to their immediate supervisor or manager. Disclosures can also be made to the Chief Executive Officer and Principal Registrar (CEO) of both the FCA and the FCFCOA.

The CEO and Principal Registrar of the FCA has authorised the following officers to handle public interest disclosures:

- Catherine Sullivan – Executive Director Corporate Services;
- Darrin Moy – Executive Director People, Culture and Communications;
- Christine Fewings – Native Title Registrar, National Native Title Tribunal; and
- Scott Tredwell – General Counsel.

The CEO and Principal Registrar of the FCFCOA has authorised the following officers to handle public interest disclosures:

- Virginia Wilson – Deputy Principal Registrar and National Family Law Registrar;
- Amanda Morris – National Judicial Registrar, Judicial and Registrar Case Management; and
- Lynda Maitland – Judicial Registrar.

Disclosures can be made directly to these authorised officers, including by email as follows:

- Federal Court – PID@fedcourt.gov.au
- Federal Circuit and Family Court – PID@fcfcoa.gov.au
- National Native Title Tribunal – PID@nntt.gov.au

However, disclosures can be in any form, including oral, but should ideally be in writing and accompanied by any supporting evidence. Whilst helpful, disclosures do not have to make specific reference to the PID Act – it is sufficient for them to identify any matter that might constitute ‘disclosable conduct’.

The PID Act requires the agency to maintain confidentiality of the person making the disclosure unless otherwise authorised by that person. It is a criminal offence to reveal the identity of a discloser without their consent.

A disclosure may be made anonymously. Anonymous disclosures supported by sufficient evidence to justify an investigation will also be handled in accordance with the procedures outlined in this policy.

5. Procedure for handling and investigating disclosures

Supervisors and managers who receive disclosures must, as soon as reasonably practicable, give the information to one of the authorised officers listed in the preceding section. This should be by email or some other verifiable way. It is important that supervisors and managers request and receive an acknowledgment regarding the disclosure from the authorised officer to ensure that any disclosure is received by the authorised officer.

Authorised officers must take appropriate action within 14 days of becoming aware of the disclosure.

An authorised officer must use their best endeavours to assess a disclosure, including whether it should be allocated to another agency, within 14 days of receiving it. They may obtain information from such persons and make such inquiries as they think fit.

Once a disclosure has been allocated, an authorised officer will inform the discloser. If allocated to another agency, the authorised officer will also notify the principal officer of any agency to which the handling of the disclosure is allocated. If an authorised officer decides that a disclosure should not be allocated, they will inform the discloser of the reasons for this and any other courses of action that might be available.

Once a disclosure has been allocated for handling under the PID Act, the CEO and Principal Registrar will have the disclosure investigated unless the disclosure does not, to any extent, concern serious disclosable conduct, the disclosure is frivolous or vexatious, or the information is the same or substantially the same as a disclosure that has been or is being investigated.

The principal officer may nominate an investigator and will inform the discloser that an investigation is to take place and the estimated length of the investigation. An investigation report must be completed within 90 days of the matter being allocated for investigation, unless the Ombudsman has extended that period by an additional period.

When the investigation is completed, a copy of the report will be provided to the discloser.

6. Protections provided under the PID Act

The PID Act provides the following protections for persons who make a PID:

- The person will not be subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure. However, this immunity does not apply when the discloser knowingly and without reasonable excuse contravenes a designated publication restriction or when the disclosure is knowingly false or misleading;
- No contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the PID;
- The person has absolute privilege in proceedings for defamation in respect of a PID;
- A contract to which the person is a party must not be terminated on the basis that the disclosure constitutes a breach of the contract;
- It is a criminal offence for a person to take, or threaten to take, reprisal action against another person under the PID Act. 'Reprisal action' is defined in the PID Act as an act or omission that causes detriment to another person, which occurs by reason of a belief or suspicion that a PID was made, may have been made, or proposes to be made;
- Remedies, including compensation and injunctions, may be available in respect of reprisal actions under the PID Act or the *Fair Work Act 2009* (Cth) (although an application may only be made under one Act);
- The general workplace protections offered by Part 3-1 of the *Fair Work Act 2009* (Cth) will apply in relation to the making of a public interest disclosure by a public official who is an employee within the meaning of that Act;
- It is a criminal offence to reveal the identity of a discloser without their consent. Authorised officers may need to point out that it may not, however, be possible to fully investigate a matter without consent to identify the discloser and that, while utmost care may be taken, others may guess at the identity of the discloser.

These protections do not necessarily protect the discloser in relation to their own wrongdoing, where they have been involved in the misconduct they are reporting. These protections are also not available to staff who make intentionally false or misleading disclosures.

7. Assessing the risk of reprisals and providing confidentiality – arrangements to protect employees from harassment and disadvantage

The principal officer (or their delegate) will assess the risk that reprisals may be taken and take reasonable steps to protect public officials from detriment or threats of detriment relating to PIDs. Where necessary, this can be done with reference to guidelines on the Commonwealth Ombudsman's website. Reasonable steps may include:

- investigating any allegations of harassment independently;
- taking appropriate follow-up action;
- taking action to ensure the employee making the report is not disadvantaged, e.g. is not denied access to their entitlements, rights or development opportunities;

- in the event that a reporting employee may experience, or perceive to have experienced, disadvantage as a result of their report, the court or tribunal will take appropriate action to address their concerns;
- providing other forms of support or protection that may be appropriate in the circumstances, e.g. counselling;
- ensuring appropriate steps are taken to minimise any physical threat to the employee, their family or property; and/or
- providing and maintaining the confidentiality of the discloser, as far as practicable.

8. Review of process and outcome

Complaints regarding the way a disclosure is handled can be made directly to the Commonwealth Ombudsman. The Ombudsman may also investigate matters referred directly to the Ombudsman's Office.