



HUMAN RESOURCE MANAGEMENT POLICY

SUBJECT

Public Interest Disclosure Act 2013

SUMMARY OF POLICY

This policy outlines the arrangements and processes in the Federal Court for the operation of the Public Interest Disclosure Act 2013.

POLICY NO.

DATE OF ISSUE

DATE OF EFFECT

15 January 2014

EMPLOYEES AFFECTED

All staff.

CONTACT OFFICER(S)

The Director Human Resources or any member of the Human Resources Section

**LAST HUMAN RESOURCES
POLICY ISSUED (DATE)**

N/A

SUPERSEDES POLICY NO.

Supersedes the Court's Whistleblowing Policy.



1. Purpose

The purpose of this policy is to outline how the *Public Interest Disclosure Act 2013* (PID Act) will operate in the Federal Court of Australia. 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 Court has in place to maintain the highest standards of ethical and accountable conduct in all areas of the Court and National Native Title Tribunal (NNTT).

Staff and others covered by the PID Act are encouraged to use this policy to report any wrongdoing they encounter within the Court, NNTT and other areas of the Commonwealth public sector.

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 scheme covers persons working in, or with a relevant connection to, the Commonwealth public sector. This includes all APS agency heads and APS employees. Individual contracted service providers ('contractors') to the Commonwealth and Commonwealth authorities are also considered public officials, and the employees of a contracted service provider 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' 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 or a public official in connection with his or her position as a public official. 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



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

Disclosable conduct does not include disagreement with government policy, action or expenditure. Judicial conduct; conduct of Court staff exercising delegated judicial functions or powers as well as other powers of the Court and any other conduct relating to matters before the Court are also excluded, although other aspects of the management and administration of the Court's registries and resources are included.

There are 4 types of public interest disclosures under the PID Act: internal disclosures, external disclosures, emergency disclosures and legal practitioner disclosures. Generally public officials, including Court employees, should make an 'internal disclosure' in the first instance (either to an Authorised Officer or to their immediate supervisor or manager).

An 'external disclosure' (including to the media) will only be justified in limited circumstances and only when an internal disclosure has previously been made.

4. To whom can a Public Interest Disclosure be made?

Employees of the Court can make a disclosure to their immediate supervisor or manager.

Disclosures can also be made to:

- Any District Registrar of the Court;
- The Executive Director, Corporate Services; and
- For the Deputy Registrars of and the staff assisting the NNTT, the Deputy Registrar Operations East or the Deputy Registrar Operations West.

Disclosures can also be made to the Court's Registrar.

These positions are 'authorised internal recipients' of disclosures or **Authorised Officers**.

Disclosures can be in any form, including oral, but should ideally be in writing and accompanied by any supporting evidence. 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'.

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

Managers and supervisors receiving disclosures should refer the matter to an Authorised Officer without delay. This would generally be the Authorised Officer with responsibility for the relevant work group. Authorised Officers must take appropriate action within 14 days of becoming aware of the disclosure.

The PID Act requires the agency to maintain confidentiality of the person making the disclosure unless otherwise authorised by the person.

Once an Authorised Officer receives a disclosure, they will consider whether the matter warrants investigation, having regard to the PID Act. They may wish to first discuss the matter with the Registrar, including possible arrangements for any investigation. Any decision **not** to investigate must be made in accordance with Section 48 of the PID Act (e.g. it is considered that the information 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 that has been or is being investigated).

Where the matter is considered to warrant investigation, the Registrar or Authorised Officer may nominate an Investigator. When the investigation is completed, the Registrar/Authorised Officer will provide a report to the discloser, as set out in the PID Act (Section 51) and consistent with any associated requirements. Investigations into disclosures must address whether there may be a breach of the APS Code of Conduct and whether, in the event of a breach, misconduct proceedings should be considered.

The Registrar or Authorised Officer will also ensure that any other requirements of the PID Act are addressed in relation to the matter including advices to the discloser and meeting timeframes imposed by the PID Act.

An investigation report must be completed within 90 days of the matter being allocated for investigation.

6. Protections provided under the PID Act

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

- The person will not be subject to any civil, criminal or administrative liability for making the disclosure (although this immunity does not apply where a designated publication restriction is contravened without reasonable excuse or where the disclosure is knowingly false or misleading).
- No contractual or other remedy may be enforced or sanction imposed on the person on the basis of making the disclosure.
- The person has absolute privilege (for the purpose of defamation proceedings) in respect of a public interest disclosure.



- A contract to which the person is a party must not be terminated on the basis that the disclosure constitutes a breach of contract.
- It is a criminal offence for a person to take, or threaten to take, reprisal action against a person who has made, or who is thought to have made, a public interest disclosure.
- Other remedies, including compensation and injunctions, may also be available in respect of reprisal actions under the PID Act or the *Fair Work Act 2009* (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* 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 Registrar or Authorised Officer will assess the possible risk of reprisal and take appropriate action to ensure that disclosers are not disadvantaged and do not suffer harassment as a result of the disclosure. Where necessary this can be done with reference to guidelines on the Commonwealth Ombudsman's website. Appropriate measures may include:

- Investigating all 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 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.
- Providing and maintaining the confidentiality of the informant, as far as practicable.

8. Managers and Supervisors Responsibilities

Managers/supervisors who receive disclosures must refer the matter immediately to the relevant Authorised Officer. Allegations concerning Authorised Officers should be referred direct to the Registrar or another Authorised Officer.

Employees who make reports must be kept informed of the status of investigations, having regard to the statutory requirements of the PID Act; for example, to whom the matter has been referred, the status of investigations, etc.

9. Review of process and outcome

Employees, and others, who are not satisfied with the review process or the outcome of an internal investigation may pursue a complaint with the Commonwealth Ombudsman.

The Ombudsman may also investigate matters referred directly to the Ombudsman's Office.

10. Review of Policy and Questions

This policy will be reviewed after 12 months, in January 2015, or as otherwise required.

Questions on the policy should be directed to the Court's Human Resources Director in the first instance.