

# Justice and Community Safety Directorate

## Public Interest Disclosure

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## Public Interest Disclosure Act 2012

The *Public Interest Disclosure Act 2012* (the Act) was passed by the Legislative Assembly in August 2012 and replaces the *Public Interest Disclosure Act 1994*.

The Act places the onus on the ACTPS entity to which the disclosure relates to take action to resolve a problem.

The Act came into effect on 1 February 2013. It improves on the previous legislation by broadening and clarifying the types of wrongdoing that fall within the definition of disclosable conduct; establishes a clear reporting pathway for the receipt and handling of disclosures; and provides specific circumstances under which a disclosure can be made to a third party.

## Guidelines

The Justice and Community Safety Directorate is applying Australian Capital Territory Public Interest Disclosure Guidelines 2014 which can be found at <http://www.legislation.act.gov.au/>

## What is a Public Interest Disclosure (PID)?

Sometimes matters raised sit outside the normal complaint or feedback system. Certain disclosures trigger a special framework put in place to handle serious or systemic concerns. This scheme takes these matters out of the regular complaint handling process and places them in a category called a "Public Interest Disclosure" (PID).

Disclosable conduct includes activity by an individual or an ACT Public Sector entity that:

- is illegal;

- misuses or wastes public money or resources;
- is misconduct;
- is maladministration;
- presents a danger to the health or safety of the public; or
- presents a danger to the environment.

In broad terms, a PID might arise when someone reports substantial wrongdoing in the ACT Public Sector. The PID scheme aims to encourage those in a position to report such wrongdoing and protect them when they come forward.

A PID might relate to events which are happening now, in the past, or that may happen in the future.

A PID can be about the actions of staff and employees of the Public Sector and ACT Legislative Assembly, including Members of the Legislative Assembly.

It can also be about the actions of contractors, sub-contractors and volunteers. This might include not-for-profit or other non-governmental organisations providing a public service to the community under a contract with an ACT Public Sector entity.

## **Who Can Make a PID?**

Any person with information that indicates substantial mismanagement or misuse of public resources can make a PID. This includes members of the public, contractors who work with ACTPS entities and ACTPS employees.

A person may make a PID even if they are not able to identify a particular person who is responsible for the activity.

The ACTPS will also accept anonymous disclosures. However, where an anonymous disclosure is made, the discloser should be aware that it will not be possible to keep them informed about the way the disclosure is handled nor will the ACTPS entity be able to provide them with protection.

## **Initial Contact**

A PID can be made by anyone in any way - orally or in writing. It does not have to be a formal complaint or report.

ACT Public Sector employees are now able to make a PID to their supervisor or manager.

A PID can also be made to a public official of an ACT Public Sector entity, for example:

- the Chief Financial Officer in relation to a disclosure about the substantial misuse of public funds by an employee of the entity;
- a Workplace Health and Safety representative of an ACTPS entity in relation to a disclosure about an employee of the entity threatening physical violence against another employee; and
- an ACTPS employee on a clinical standards committee for a public hospital in relation to a disclosure about medical malpractice at the hospital that was causing or likely to cause a substantial danger to public health.

Once the PID is disclosed, the supervisor or other public official becomes a Receiving Officer. The Receiving Officer does not have the authority to make decisions about a PID. They must forward the PID to the Designated Disclosure Officer.

Whether a person has witnessed disclosable conduct personally or someone has told them about it, they should pass that information to a **Designated Disclosure Officer (DDO)**. This is especially important for those receiving second hand information that indicates potential disclosable conduct, including supervisors and managers receiving information from their staff.

The DDO is the person in the respective ACTPS entity who will make a decision relating to a PID.

The role of the DDO is to:

- legitimately receive a PID;
- support and notify the discloser as appropriate;
- ensure appropriate action is taken in relation to the PID; and
- maintain the effective administration of the process.

The head of an ACTPS entity is a DDO, and must designate at least one other DDO in their entity.

For PIDs which relate to the head of an ACTPS entity the DDO could be any of the following:

- the Commissioner for Public Administration; or
- the Head of Service; or
- the ACT Auditor-General; or
- the ACT Ombudsman; or

For a PID which relates to the Legislative Assembly, a DDO is any of the following:

- the clerk of the Legislative Assembly;
- the ACT Auditor-General; or
- the ACT Ombudsman.

Employees in the Public Sector who have information which is so serious that they cannot discuss it with someone within their entity should inform the Commissioner for Public Administration, ACT Ombudsman or the ACT Auditor-General.

## **How Am I Protected If I Make A Disclosure?**

Under the Act, a person who acts honestly and reasonably in making a PID receives protection from attacks or reprisal that results from the disclosure (reprisal is called *detrimental action* in the Act).

If a person retaliates against the discloser by directly or indirectly punishing them for reporting information; that person will be held accountable for their behaviour. Under Section 40 of the Act, the person who has undertaken detrimental action has committed an offence. This person may be disciplined or pursued for damages in court (section 41).

## **What Happens After I Have Made a Disclosure?**

The following steps give a brief outline of how a disclosure may be handled in an ACTPS entity.

<b>Receive</b>	<ul style="list-style-type: none"> <li>*Discloser formally makes disclosure to disclosure officer; or</li> <li>*Disclosure officer formally receives disclosure from a Receiving Officer (Receiving officer must provide the disclosure to the disclosure officer <b>immediately</b>).</li> <li>*Disclosure officer must notify discloser within three months after the day the disclosure was made whether the disclosure will be investigated or dealt with under the <i>Public Interest Disclosure Act 2012</i>.</li> </ul>
<b>Acknowledge</b>	*Disclosure officer sends letter of acknowledgement.
<b>Initial Assessment</b>	<p><u>Refer</u>: If the disclosure officer believes the disclosure is better handled by another ACTPS entity, the matter should be <b>referred</b>.</p> <p><u>Assess</u>: the disclosure officer decides whether the disclosure is a PID. If the disclosure is assessed to be a PID, it <b>must</b> be investigated. If not, this decision ends the process.</p> <p><u>Investigate?</u>: If the disclosure is assessed to be a PID, the disclosure officer determines whether they should conduct the investigation internally or oversee an external investigation.</p> <p><u>Not investigate</u>: In certain circumstances, the disclosure officer may decide <b>not to investigate</b> a PID (s20). This decision ends the process.</p> <p><u>Manage the process</u>: The disclosure officer must also <b>track</b> and manage the process from problem to solution, and to <b>notify parties</b> as required.</p>
<b>Investigate</b>	<ul style="list-style-type: none"> <li>*Clear and relevant Terms of Reference and timeframes must be developed for the investigation</li> <li>*Once the discloser has been notified that an investigation will be undertaken, the disclosure officer must update them about the progress of the investigation every three months.</li> </ul>
<b>Final Decision</b>	<p>The Head of the entity (or their delegate ie. the Senior Executive Responsible for Business Integrity and Risk) makes a decision about what to do in response to the disclosure, based on the recommendations of the investigation. The ACTPS entity must take action (s24).</p> <p>The disclosure officer must document the decision.</p>
<b>Report</b>	Relevant information is compiled for the respective ACTPS entity Annual Report.
<b>Review (if necessary)</b>	The Commissioner can review any action taken or proposed to be taken in relation to a PID and may review the decision by an investigating entity to refuse to investigate a PID or to end an investigation.

## Contacts

If you are concerned that you have information that should be investigated under the Public Interest Disclosure Act, or have any other queries about the legislation, these should be directed in the first instance to the Justice and Community Safety (JACS) Senior Executive Responsible for Business Integrity and Risk (SERBIR).

## JACS SERBIR contact details

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## **Relevant links**

Public Interest Disclosure Act 2012

<http://www.legislation.act.gov.au/>

Public Interest Disclosure Guidelines

<http://www.legislation.act.gov.au/>