



Australian Government

Civil Aviation Safety Authority

**CASA Public Interest Disclosure
Procedures**

Version 2.0 - July 2015

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CASA Public Interest Disclosure Procedures

Version 2.0 - July 2015

General Counsel and Executive Manager, Legal Services Division

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This is an internal CASA policy manual. It contains guidance material intended to assist CASA officers and delegates in carrying out their regulatory responsibilities and is available to the public for information purposes only.

You should not rely on this manual as a legal reference. You should refer to the Civil Aviation Act, Civil Aviation Regulations, Civil Aviation Orders and other legislative instruments, to ascertain the requirements of, and the obligations imposed by or under, the civil aviation legislation.



Manual Responsibilities

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Date Approved:	July 2015



Director of Aviation Safety Preface

Foreword

As a Commonwealth government authority, CASA must ensure that its decision-making processes are effective, fair, timely, transparent, consistent, properly documented and otherwise in accordance with the requirements of the law.

Most of the regulatory decisions CASA makes are such that conformity with authoritative policy and established procedures will be conducive to the achievement of these outcomes. From time to time, however, decision-makers will encounter situations in which the strict application of policy, in the making of a decision involving the exercise of discretion, would not be appropriate. Indeed, in some cases, the inflexible application of policy may itself be unlawful.

This preface and the following Introduction, explains the way in which the policy and processes set out in this manual are to be used by all CASA's personnel when making decisions in the performance of their functions, the exercise of their powers and the discharge of their duties. It also explains the processes to be followed if it appears that a departure from policy is necessary or appropriate.

Mandatory Use of Policy and Procedure Manuals

This manual is one of the set of manuals and other documents which comprise CASA's authorised document set. The authorised document set contains the policy, processes and procedures with which CASA personnel are expected to comply when performing assigned tasks. All CASA personnel are required to have regard to the policies set out in this manual. Except as described in the Introduction, CASA decision-makers should not depart from these policies, processes and procedures.

Mark Skidmore AM
Director of Aviation Safety



Introduction

Regulatory Decision Making

Where the legislation provides for one, and only one decision—the “correct” decision—is the only decision open to CASA. However, most of the decisions CASA makes involve the exercise of discretion. In such cases, there may well be more than one acceptable or correct decision. In these cases, the law requires that CASA makes the “preferable” decision, that is, the most appropriate decision, having regard to the overriding interests of safety and the obligation to be fair.

In all such cases, CASA is bound to act in accordance with the applicable rules of administrative law. These rules govern how CASA arrives at the ‘preferable’ decision in any given case. Adherence to these rules is a requirement, not an option. Decisions and actions taken in contravention of these rules are unlawful, unenforceable, and in most cases invalid. CASA is legally accountable for the decisions it makes, and CASA decision-makers are obliged to avoid the appearance, as much as the reality, of unlawful decision-making.

Sound and lawful regulatory decision-making is generally governed by the 10 rules of administrative law summarised below. Adherence to these rules is essential to CASA’s obligations of accountability and good governance.

1. Natural Justice (Procedural Fairness)
 - **Hearing Rule.** Persons affected by CASA’s decisions have a right to be heard. To be meaningful, the hearing rule normally requires that CASA provides persons with notice (usually in advance) that a particular decision is going to be taken, and the reasons for the decision CASA proposes to take. Without notice and a statement of reasons, there may be little point to providing a person with an opportunity to be heard.
 - **Rule Against Bias.** Decision-makers should not have a **personal** or **pecuniary interest** in the outcome of their decisions. Neither may decision-makers prejudge (or **pre-determine**) matters in respect of which they are called upon to make a decision.
2. A decision-maker must not act for **improper purposes**. Even if the purposes for which a particular decision are lawful, the decision may only be taken for the purposes specifically authorised by the law under which the decision has been taken.
3. A decision-maker must not take any **irrelevant considerations** into account in coming to a decision.
4. A decision-maker must take all **relevant considerations** into account in coming to a decision.

Note: Applicable Policy is Always a Relevant Consideration.

5. A decision-maker must act on the basis of **evidence**, not mere supposition or speculation.
6. A decision-maker must not formulate requirements in **vague** or **uncertain terms**.
7. A decision-maker must not **inflexibly apply policy** (although departures from policy will normally need to be justified).
8. A decision-maker must not **act under dictation** (although this does not preclude adherence to formal directions, compliance with lawful conditions in relation to the process by which a decision is taken or the obligation to consult in the process of considering a decision).



9. A decision-maker must decide the matter within a **reasonable time**.
10. A decision maker must not act in a way that is manifestly **unreasonable**. A decision must not be so unreasonable that no reasonable person would make such a decision.

Note: The meaning and application of these principles, and related considerations of administrative law, are covered more fully in the induction and orientation training undertaken by all CASA employees. Any questions in relation to these matters should be referred to the Legal Services Division.

Departure from Authorised Policy

Adherence to CASA's authorised policies will almost always produce an appropriate decision. As said, however, from time to time there will be circumstances in which the strict application of policy may not result in the "preferable" decision. In these cases it may be appropriate (and possibly necessary) to depart from otherwise applicable policy.

Any departure from policy must be justified in order to ensure that it:

- Is genuinely necessary in the interests of fairness
- Does not inappropriately compromise the need for consistent decision-making; and, of course
- Is not in conflict with the interests of safety.

Without fettering a decision-maker's discretion, it is therefore expected that appropriate consultation will occur before a decision is made that is not the product of the policies and processes set out in this manual. The prescribed consultation process is described below.

Consultation Process

Decision-Maker's Responsibilities

When a decision-maker believes there is a need to depart from policy he or she is expected to consult with his or her direct supervisor. This process should be initiated in writing:

- Setting out the pertinent facts and circumstances
- Identifying the provisions of the policy normally applicable
- Stating why the application of that policy would not result in the making of the "preferable" decision in the circumstances to hand
- Specifying the approach the decision-maker believes is more likely to result in a "preferable" decision.

Supervisor's Responsibilities

In considering a consultative referral, the decision-maker's supervisor should:

- Advise the decision-maker as to whether his or her assessment of the relevant considerations appears to be complete and correct
- If, in the opinion of the supervisor, the circumstances do not warrant a departure from policy, provide the decision-maker with written advice and guidance as to how the decision might more properly be approached within the current policy framework

Note: Reliance on relevant precedent is a sound basis on which to ground such an opinion. It may also be helpful to seek advice from peers, superiors and/or CASA's Legal Services Division.



- If, in the opinion of the supervisor, a departure from policy is warranted, the supervisor should ensure the policy sponsor (normally the relevant Executive Manager) is advised of:
 - The intention to depart from the otherwise applicable policy
 - The alternative approach the decision-maker will be taking to the matter.

The supervisor should ensure that a full written record of these actions is made and maintained.

Note: In no case may the terms of decision be dictated to a delegate authorised to exercise discretionary decision making powers.

If a decision maker's supervisor or the policy sponsor is not satisfied that the decision the decision maker intends to make is the correct or preferable decision in all the circumstances, responsibility for that decision should be assumed by, or assigned to, another authorised delegate in accordance with appropriate processes and procedures.

Policy Sponsor's Responsibilities

If the policy sponsor concurs in the proposed departure from policy, he or she should ensure the decision-maker is advised accordingly as soon as possible.

If the policy sponsor does not believe the proposed departure from policy is warranted, he or she should:

- Advise the supervisor accordingly
- Assume responsibility for the decision
- Ensure that the decision-maker and any person affected by the decision (for which the policy sponsor has assumed responsibility) is advised accordingly
- Make the decision in a manner consistent with the applicable policy.

The policy sponsor should ensure that a full written record of these actions is made and maintained.

Nothing in these processes should be interpreted or applied so as to dictate the terms of the decision to be made by a decision-maker authorised to make discretionary decisions under the civil aviation legislation, or to delay unreasonably the making of such decisions.

Revisions to Policies and Manuals

As a result of experience in applying policies and procedures, users will form views as to accuracy, relevance and applicability of the content.

CASA personnel are required to provide recommendations for revisions to policies and processes in this or any other manual should they become aware of shortcomings. In this way the policies and manuals will be continually improved and remain relevant to the tasks being undertaken.

Each policy and manual has a sponsor and recommendations for amendment are to be forwarded to the relevant individual for consideration. The revision process can be accessed via the link:

http://casaconnect/manuals/doc_control/process.html



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Acronyms	
CASA	Civil Aviation Safety Authority
IGIS	Inspector-General of Intelligence and Security
LSD	Legal Services Division
PID Act	Public Interest Disclosure Act 2013



Revision History

Amendments/revisions of this Manual are recorded below in order of most recent first.

Version No.	Date	Parts/Sections	Details
2.0	July 2015	3.5	Minor amendments to deal with reprisal risk assessment
1.0	January 2014	All	First issue



1 INTRODUCTORY MATTERS

[Section 3](#) of this document constitutes the Civil Aviation Safety Authority's (**CASA**) procedures for facilitating and dealing with public interest disclosures for the purposes of section 59(1) of the [Public Interest Disclosure Act 2013 \(Cth\)](#) (**PID Act**). The operation of these procedures will be reviewed regularly to ensure their continued effectiveness. In these procedures, all references to the Director include references to her or his delegate(s).



2 WHAT ARE PUBLIC INTEREST DISCLOSURES?

It is important to note that not all disclosures of information that might be made to CASA will be a "public interest disclosure" for the purposes of the [PID Act](#) (a PID). A disclosure of information will only be a PID to which these procedures relate if:

- a) it is made by a "public official" that "belongs to" or has belonged to CASA, which includes current and some former CASA employees and contracted service providers;¹
- b) the information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of "disclosable conduct" as defined by the PID Act²; and
- c) the disclosure is made to an appropriate person³.

An overview of these key requirements, prepared by the Commonwealth Ombudsman, is set out at [Attachment A](#).

Only if each of the above requirements has been met will the disclosure be covered by the PID Act and the discloser have the benefit of the protections that it confers. Accordingly, it is important that persons contemplating making a disclosure of information carefully review the contents of the PID Act and seek independent legal advice where appropriate in order to determine whether the disclosure can be made in a way that attracts the protections of the PID Act.

Summaries of the rights and responsibilities of a discloser and a person who is the subject of a disclosure under this procedure are set out at [Attachment B](#) and [Attachment C](#) respectively.

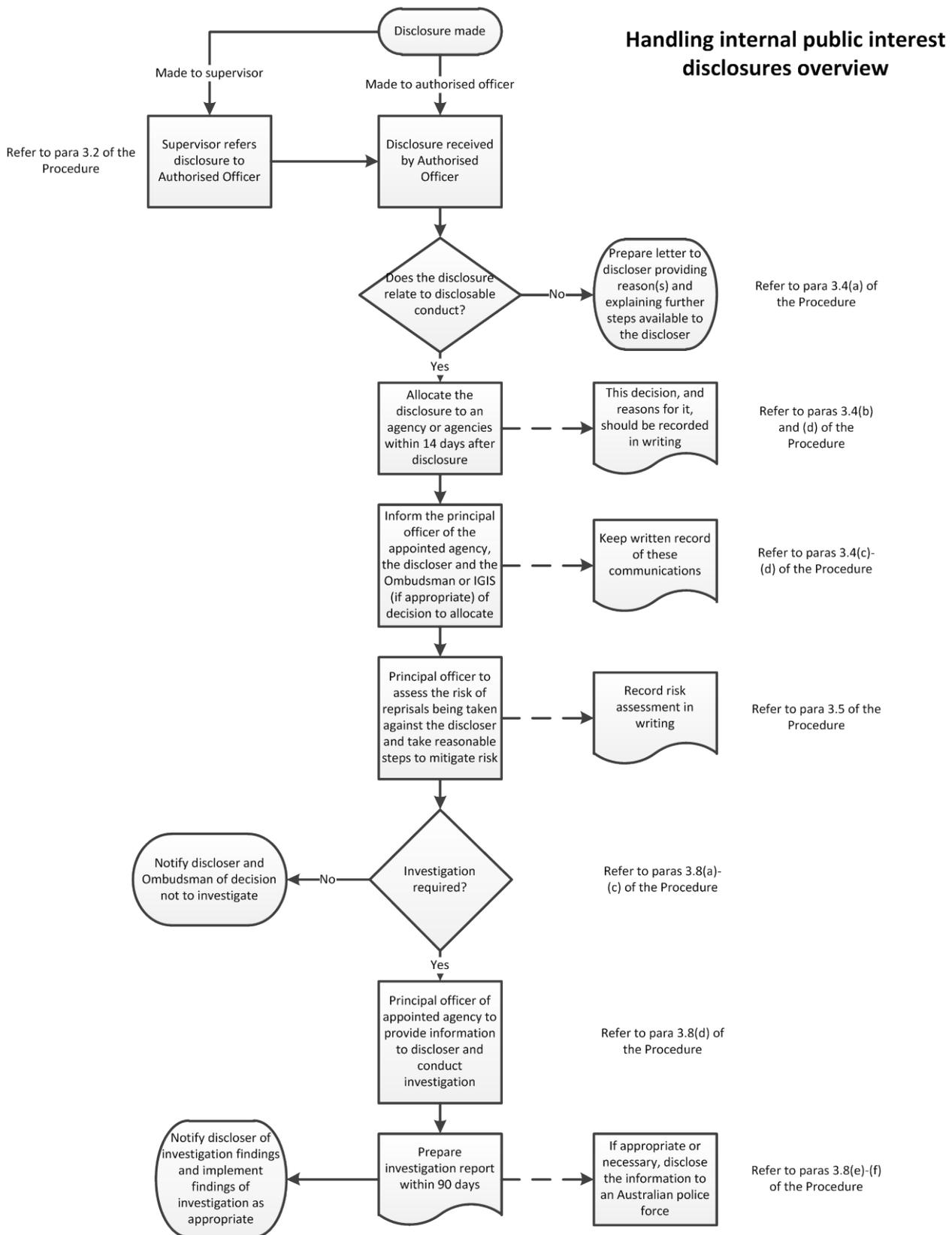
Further guidance material can also be obtained from the following website:
<<http://www.ombudsman.gov.au/pages/pid>>.

Links to relevant definitions in the PID Act are set out in [Attachment D](#).

¹ See section 69 of the [PID Act](#).

² What does and does not constitute disclosable conduct is defined in sections 29-33 of the [PID Act](#).

³ Generally, to constitute a PID, the disclosure must first be made to an "authorised internal recipient" or a supervisor of the discloser as defined in sections 34 and 8 (respectively) of the PID Act. In some limited circumstances, a disclosure can be made to an external party. The PID Act sets out strict requirements which must be met for such external disclosures to be afforded the protections contained in the PID Act: see section 26 of the [PID Act](#).





3 PROCEDURES

3.1 AUTHORISED OFFICERS

The "authorised officers" for the purposes of the PID Act are:

- the Director of Aviation Safety (the Director) as the principal officer" under the PID Act;
- and any authorised officers appointed by the Director.

The Director has appointed the Deputy Director of Aviation Safety and the Associate Director of Aviation Safety as "authorised officers".

A PID can be made to an authorised officer of CASA if the PID relates to CASA and the discloser "belongs" to CASA, or last belonged to CASA – see [paragraph 2\(a\) above](#).

3.2 DISCLOSURE TO A SUPERVISOR

If a public official discloses information to a supervisor and the supervisor has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the supervisor must give the information to an authorised officer of CASA as soon as reasonably practicable.

3.3 PROTECTING CONFIDENTIALITY

The authorised officer and the Director will take all reasonable steps to protect the identity of a public official who has made a PID from the time the disclosure is made.

Only individuals directly involved in dealing with the PID (such as the authorised officer and the Director) may be advised of the details of the PID. These individuals must not disclose the identity of the discloser or any information which is likely to reveal the identity of the discloser without the consent of the discloser.

It is an offence for a public official to disclose information that is likely to enable the identification of a person as a person who has made a public interest disclosure other than in accordance with the PID Act.

Similarly, if a person discloses information to another person or uses information otherwise than in accordance with the PID Act, the person commits an offence if the information was obtained by the person:

- in the course of conducting a disclosure investigation; or
- in connection with the performance of a function or the exercise of a power by the person under the PID Act.

Identifying information about a discloser will not be disclosed to a court or tribunal except where necessary to give effect to the PID Act.

3.4 INITIAL CONSIDERATION AND ALLOCATION

a) Step 1: Consider whether a disclosure meets the requirements for a PID

When an authorised officer receives a disclosure of information, he or she will consider the information disclosed and determine whether there are reasonable grounds on which the disclosure could be considered to be an internal disclosure made in accordance with the PID Act.



If the authorised officer is so satisfied:

- he or she will allocate the disclosure to one or more agencies for further handling and investigation in accordance with the process outlined at Step 2, and proceed with the other steps in these Procedures.

If the authorised officer is not so satisfied:

- the disclosure will not be allocated and:
 - if contacting the discloser is reasonably practicable, the authorised officer must inform the discloser in writing of:
 - the reasons why the disclosure will not be allocated to an agency; and
 - any other course of action that might be available to the discloser under other laws of the Commonwealth; and
 - if the disclosure relates to conduct that may need to be addressed under CASA's:
 - Fraud Control Policy;
 - Code of Conduct Policy;
 - Managing Breaches of the Code of Conduct;
 - Work Health and Safety Policy;
 - Performance Appraisal and Communication Scheme;
 - Discrimination, Harassment and Bullying Prevention Policy; or
 - any other of CASA's policies or procedures;

the authorised officer may refer the matter to be dealt with in accordance with the relevant policy or procedure.

The principal officer and authorised officers have access to [sample letters](#) that deal with notifying a discloser of the decision whether or not to allocate a disclosure under the PID Act ([sample letter 1](#) and [sample letter 2](#)).

b) Step 2: Allocate the disclosure

The authorised officer will use his or her best endeavours to decide the allocation within 14 days after the disclosure is made to the authorised officer. In deciding the agency or agencies to which a disclosure will be allocated, the authorised officer will have regard to:

- the principle that an agency – other than the Ombudsman, the Inspector-General of Intelligence and Security (IGIS) or an investigative agency prescribed by the Public Interest Disclosure Rules⁴ – should only deal with disclosures that relate to that agency; and
- such other matters (if any) as the authorised officer considers relevant.

In addition, the authorised officer should consider the desirability of obtaining the discloser's consent for the authorised officer to notify the discloser's identity and contact details to a principal officer (including the principal officer of an agency other than CASA). In doing so, the authorised officer should have regard to whether investigation of the disclosure will be impractical if such consent is withheld.

⁴ At the time of publication of this policy, no Public Interest Disclosure Rules had been published.



In addition, if the authorised officer is contemplating allocating the disclosure to the Ombudsman, the IGIS or an investigative agency that has been prescribed by the Public Interest Disclosure Rules, the authorised officer must have regard to additional matters set out in the PID Act⁵.

The authorised officer must not allocate a disclosure to another agency unless an authorised officer of that agency has consented to the allocation.

The principal officer and authorised officers have access to [sample letters](#) relevant to the allocation of disclosures to other agencies ([sample letter 3](#) and [sample letter 4](#)).

c) Step 3: Inform relevant persons of the allocation

Informing the receiving agency

When the authorised officer allocates the handling of a disclosure to CASA, the authorised officer will inform the principal officer (the Director) of:

- the allocation to CASA;
- the information that was disclosed to the authorised officer;
- the suspected disclosable conduct; and
- if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the principal officer being informed – the discloser's name and contact details.

Informing another agency

When the authorised officer allocates the handling of a disclosure to an agency other than CASA, the authorised officer will inform the principal officer of that agency of:

- the allocation to the agency;
- the information that was disclosed to the authorised officer;
- the suspected disclosable conduct; and
- if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the principal officer being informed – the discloser's name and contact details.

The principal officer and authorised officers have access to a [sample letter](#) relevant to the allocation of disclosures to other agencies ([sample letter 3](#)).

Informing the discloser

If contacting the discloser is reasonably practicable, as soon as reasonably practicable after the allocation has occurred, the authorised officer will also inform the discloser in writing of the allocation and of the information that has been provided to the principal officer of that agency.

The principal officer and authorised officers have access to a [sample letter](#) that deals with the notification of an allocation to disclosers ([sample letter 5](#)).

Informing other relevant bodies

If the authorised officer allocated a disclosure to an agency, including CASA itself, other than the Ombudsman, the IGIS or an intelligence agency, he or she will inform the Ombudsman of this in writing. If the disclosure is allocated to an intelligence agency, the authorised officer will inform the IGIS of this in writing.

⁵ See section 44(3)(a)(ii)-(iv) of the [PID Act](#).



The principal officer and authorised officers have access to a [sample letter](#) that deals with the notification of allocations to the Ombudsman ([sample letter 4](#)).

d) Step 4: Make a record of the allocation decision

Record of decision

When an authorised officer allocates the handling of a disclosure to one or more agencies, he or she must keep an appropriate record of:

- the decision (including the name of each agency to which the disclosure is to be allocated);
- the reasons for the decision; and
- the consent provided by the authorised officer of the agency to which the allocation is made.

Record of communication of decision to discloser

In addition, the authorised officer must keep appropriate records of whether the discloser was informed of the allocation decision and, if so, of:

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

These records should be kept confidential.

3.5 RISK ASSESSMENT

a) Step 1: Conduct a risk assessment

When the Director receives a PID that has been allocated to CASA, he or she will assess the risk that reprisals will be taken against the discloser. The Director will complete and retain in the relevant electronic file a risk assessment form (CASA form number 604).

Assessing the likelihood of potential reprisals

When considering the likelihood of a reprisal being taken against a discloser, the Director should take into account all relevant factors, including to the extent relevant:

- the likelihood of the discloser being identified, which may involve a 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 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.

When assessing the likelihood of potential reprisals, and where consistent with protecting the discloser's confidentiality, the Director may ask the discloser why they are reporting the wrongdoing and from whom they might fear a reprisal. The Director may also speak to the discloser's supervisor or manager.

Assessing the overall seriousness of the risk of reprisals

If the Director determines that there is a risk that reprisals will be taken against the discloser, the Director should use the following risk matrix to assess overall seriousness of that risk:

		Likely seriousness of reprisal			
		Minor	Moderate	Major	Extreme
Likelihood of reprisal being taken against a discloser	Almost certain	Medium	High	High	High
	Likely	Medium	Medium	High	High
	Unlikely	Low	Medium	Medium	High
	Highly unlikely	Low	Low	Medium	Medium

Examples of seriousness of reprisals

- 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).
- Major: Sustained or one-off action which has a significant impact on the person (for example, consistently excluding the person from team discussions or imposing a negative performance assessment on the person).
- Extreme: Action which is likely to have a very severe impact on the person (for example, physical violence or the denial of a promotion opportunity).

Criteria for assessing likely seriousness of potential reprisals

In considering the likely seriousness of any potential reprisal against a discloser, the Director should take into account all relevant factors, including, to the extent 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 that is the subject of the disclosure was directed at the discloser; and
- the relative positions of the discloser and the person whose alleged wrongdoing is the subject of the disclosure.

b) Step 2: Develop a risk mitigation strategy if necessary

The Director is required by the PID Act to take reasonable steps to protect CASA disclosers from detriment and threats of detriment. The Director will take account of the risk assessment in step 1 in developing a risk management strategy that discharges this obligation.

The risk mitigation strategy may include some or all of the support measures set out at paragraph 3.6 and, in appropriate circumstances could include raising the matter with employees by reminding staff that taking or threatening to take a reprisal against a discloser is a criminal offence.

c) Step 3: Monitor and review risks

The Director should monitor and review the risk assessment as necessary throughout the investigation process.

3.6 SUPPORT FOR DISCLOSERS

Regardless of the outcome of the risk assessment, the Director will take all reasonable steps to protect public officials who have made a PID from detriment or threats of detriment relating to the PID. This may include taking one or more of the following actions:

- a) appointing, through People and Performance Branch and on a confidential basis, a support person to assist the discloser who is responsible for checking on the wellbeing of the discloser regularly;
- b) informing the discloser of the progress of the investigation;
- c) advising the discloser of the availability of the Employee Assistance Program;
- d) where there are any concerns about the health and wellbeing of the discloser, liaising with officers responsible for work health and safety in CASA; or
- e) transferring the discloser to a different area within the workplace (with the consent of the discloser).

3.7 SUPPORT FOR A PERSON AGAINST WHOM A DISCLOSURE HAS BEEN MADE

The Director will also take steps to support any employee who is the subject of a PID, including through consideration of whether to appoint a support person on a confidential basis through People and Performance Branch.

This may include taking one or more of the following actions:

- a) advising the employee of his or her rights and obligations under the PID Act and about CASA's investigation procedures, including the employee's rights to procedural fairness;
- b) informing the employee of the progress of the investigation;
- c) advising the employee of the availability of the Employee Assistance Program;
- d) ensuring that the identity of the employee is kept confidential as far as reasonably practicable;



- e) where there are any concerns about the health and wellbeing of the employee, liaising with officers responsible for work health and safety in CASA; or
- f) transferring the employee to a different area within the workplace (with the consent of the employee).

3.8 CONSIDERATION AND INVESTIGATION BY PRINCIPAL OFFICER

a) Step 1: Provide initial information to disclosers

Within 14 days of CASA being allocated a PID, the Director will provide the discloser with information about the exercise of his or her powers to:

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

The principal officer and authorised officers have access to [sample letters](#) that deal with decisions not to investigate a PID or not to further investigate a PID ([sample letter 7](#) and [sample letter 8](#)).

b) Step 2: Consider whether to investigate the disclosure

If a PID is allocated to CASA, the Director will consider whether or not to investigate the PID.

The Director may decide not to investigate a disclosure only if the Director considers that one of the following applies:

- the discloser is not and has not been a public official;
- the information does not, to any extent, concern serious disclosable conduct;
- the disclosure is frivolous or vexatious;
- the information is the same or substantially the same as disclosable conduct that has been or is currently being investigated as part of another disclosure investigation;
- the information concerns disclosable conduct that is the same or substantially the same as disclosable conduct that is being investigated under a law of the Commonwealth or the executive power of the Commonwealth and:
 - it would be inappropriate to conduct another investigation at the same time; or
 - the Director is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation;
- the discloser has informed the Director that the discloser does not wish for the investigation of the disclosure to be pursued and the Director is reasonably satisfied that there are no matters concerning the disclosure that warrant investigation;
- it is impracticable for the disclosure to be investigated because:
 - the discloser's name and contact details have not been disclosed;
 - the discloser fails or is unable to give such information or assistance as the person who is or will be investigating asks the discloser to give; or
 - the age of the information makes this the case.



If none of the above circumstances under heading Step 2(b) apply, the Director will conduct an investigation.'

What is serious disclosable conduct?

The PID Act does not define 'serious disclosable conduct'. The principal officer should consider all the relevant circumstances based on the information before them. Factors which might be considered could include:

- whether the wrongdoing, if proven, involves an offence with a significant penalty or would lead to severe disciplinary or other consequences;
- whether the wrongdoing was one of a series of incidents that indicates a course of conduct;
- the level of trust, confidence or responsibility placed in a public official who is alleged to have acted wrongly;
- the level of risk to others or to CASA;
- the harm or potential harm arising from the conduct, including the amount of public money wasted;
- the benefit or potential benefit derived by the public official or others;
- whether the public official acted in concert with others, and the nature of their involvement;
- any apparent premeditation or consciousness of wrongdoing;
- what the public official ought to have done and how their conduct might reasonably be viewed by their professional peers;
- any applicable policies and the code of conduct;
- maladministration that relates to significant failure in the administration of government policy, programs or procedures.

c) Step 3: Notify the discloser and Ombudsman

If the disclosure will not be investigated

If the Director decides not to investigate a disclosure, he or she will:

- if reasonably practicable to contact the discloser, inform the discloser that the Director has decided not to investigate the disclosure, identifying:
 - the reasons for the decision not to investigate (other than those reasons that would be exempt for the purposes of Part IV of the Freedom of Information Act 1982, have or be required to have a national security or other protective security classification or contain intelligence information); and
 - any courses of action that might be available to the discloser under other laws of the Commonwealth; and
- inform the Ombudsman of the decision not to investigate and the reasons for that decision.

If the disclosure will be investigated

If the Director decides to investigate the disclosure, he or she will, as soon as reasonably practicable, inform the discloser:

- that he or she is required to investigate the disclosure; and



- of the estimated length of the investigation.

The principal officer and authorised officers have access to [sample letters](#) that deal with decisions to investigate or not to investigate a PID ([sample letter 6](#), [sample letter 7](#) and [sample letter 8](#)).

d) Step 4: Conduct an investigation

If the Director decides to investigate, the Director will investigate whether there are one or more instances of disclosable conduct.

General principles

The following general principles will apply to the conduct of investigations:

- maintaining the confidentiality of the identity of the discloser will be paramount when conducting the investigation;
- information relating to the disclosable conduct will be collated as quickly as possible;
- the information relating to the disclosable conduct will be collected and conclusions will be drawn impartially and objectively;
- the person conducting the investigation must be (and must be perceived to be) impartial and unbiased;
- all evidence relevant to the matter will be collected whether it supports the allegations or refutes them;
- a decision whether evidence is sufficient to prove a fact will be determined on the balance of probabilities; and
- a person who is the subject of the investigation will be provided with an opportunity to respond.

Aside from compliance with these principles, the Director is free to conduct the investigation as he or she sees fit. The way in which the investigation is conducted may vary depending on the alleged conduct which is being investigated. In particular, in circumstances where the Director considers that the nature of the disclosure is such that the outcome of the investigation is likely to be referral of the matter for investigation under another process or procedure, the investigation under these procedures may appropriately be conducted in a circumscribed way.

Additional procedures required in particular circumstances

If a disclosure relates to conduct that would require CASA to take steps under CASA's:

- Fraud Control Policy;
- Code of Conduct Policy;
- Managing Breaches of the Code of Conduct;
- Work Health and Safety Policy;
- Performance Appraisal and Communication Scheme;
- Discrimination, Harassment and Bullying Prevention Policy; or
- any other of CASA's policies or procedures,

the processes set out in those procedures and policies must be complied with in the conduct of an investigation under these procedures.



If the Director considers that information disclosed in the course of a PID may be appropriately dealt with under another procedure or policy of CASA, he or she may recommend in the investigation report that this occur and refer the matter to the relevant part of CASA.

Obtaining information

Instances of disclosable conduct may relate to information that is disclosed or information obtained in the course of the investigation rather than information provided in the initial disclosure.

During the investigation, the Director may, for the purposes of the investigation, obtain information from such persons and make such inquiries as the Director sees fit.

When being interviewed as part of an investigation, an interviewee will be informed of the following:

- the identity and function of each individual conducting the interview;
- the process of conducting an investigation;
- the authority of the Director under the PID Act to conduct the investigation; and
- the protections provided to witnesses under section 57 of the PID Act.

The Director will ensure:

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

In conducting the investigation, the Director may adopt findings set out in reports of investigations or inquiries under other Commonwealth laws or executive powers, or other investigations under the PID Act.

Referral of information to police and others

If, during the course of the investigation, the Director suspects on reasonable grounds that some of the information disclosed or obtained in the course of the investigation is evidence of the commission of an offence against a law, the Director may disclose the information to a member of an Australian police force. If the information relates to an offence that is punishable for a period of at least two years, the Director must disclose the information to a member of an Australian police force.

The investigation may also include consideration of whether a different or further investigation should be conducted by CASA or another body under another law of the Commonwealth.

e) Step 4: Prepare investigation report

Once the Director has completed the investigation, he or she will prepare a report of the investigation.

The Director must complete the investigation report within 90 days after the disclosure was allocated to the Director, unless this period is extended by the Ombudsman. If the period is extended, the Director will inform the discloser of the progress of the investigation.

Content of report



The report must set out:

- the matters considered in the course of the investigation;
- the duration of the investigation;
- the Director's findings (if any);
- any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates;
- the action (if any) that has been, is being or is recommended to be taken; and

to the extent relevant:

- the steps taken to gather evidence;
- a summary of the evidence; and
- any claims made about and any evidence of detrimental action taken against the discloser, and CASA's response to those claims and that evidence.

f) Step 5: Provide report to discloser

If it is reasonably practicable to contact the discloser, the Director will provide the discloser with a copy of the report within a reasonable time after preparing the report. However, the Director 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
- would be exempt for the purposes of Part IV of the Freedom of Information Act 1982, would require a national security or other protective security clearance, contains intelligence information or contravenes a designated publication restriction as defined in the PID Act.

The principal officer and authorised officers have access to a [sample letter](#) that can be used to send a copy of a report to a discloser ([sample letter 9](#)).



ATTACHMENT A

Extracts from the Commonwealth Ombudsman's Agency guide to the Public Interest Disclosure Act 2013

Who can make a public interest disclosure?

A person must be a current or former 'public official', as defined in s 69 of the PID Act, to make a public interest disclosure. This is a broad term which includes a CASA officer, CASA authorised person or delegate, Commonwealth public servant, member of the Defence Force, appointee of the Australian Federal Police, Parliamentary Service employee, director or staff member of a Commonwealth company, statutory office holder or other person who exercises powers under a Commonwealth law. Individuals and organisations that provide goods or services under a Commonwealth contract (defined in s 30(3)) and their officers or employees are also included. This includes subcontractors who are responsible for providing goods or services for the purposes of the Commonwealth contract (s 30(2)).

What can be disclosed?

A public official can disclose information that they believe, on reasonable grounds, tends to show 'disclosable conduct'. Disclosable conduct is conduct by:

- an agency
- a public official in connection with their position
- a contracted Commonwealth service provider in connection with entering into or giving effect to the contract

if that conduct:

- contravenes a Commonwealth, State or Territory law
- in a foreign country, contravenes a foreign law that applies to the agency, official or service provider
- perverts the course of justice
- is corrupt
- constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent
- is an abuse of public trust
- involves fabrication, falsification, plagiarism or deception relating to scientific research, or other misconduct in relation to scientific research, analysis or advice
- results in wastage of public money or public property
- unreasonably endangers health and safety
- endangers the environment
- is prescribed by the PID rules (s 29(1)).

Without limiting any of those grounds, disclosable conduct also includes conduct by a public official that involves or is engaged in for the purposes of abusing their position as a public official, and conduct that could give reasonable grounds for disciplinary action against the public official (s 29(2)).



What is not disclosable conduct?

It is not disclosable conduct just because a person disagrees with:

- a government policy or proposed policy
- action or proposed action by a minister, the Speaker of the House of Representatives or the President of the Senate
- expenditure or proposed expenditure related to such policy or action (s 31).

Disclosable conduct also does not include judicial conduct, that is, the conduct of judicial officers, the judicial functions of court staff, tribunal staff or tribunal members, or any other conduct related to a court or tribunal unless it is of an administrative nature and does not relate to matters before the court or tribunal (s 32).

The conduct of members of Parliament is not covered by the PID Act. However, the departments of the Parliament and their employees are covered.

Disclosable conduct also does not include the proper performance of the functions and proper exercise of the powers of an intelligence agency or its officials (s 33).

A disclosure must be made to an appropriate person in order to gain the protections available under the PID Act (s 26). The PID Act focuses on the reporting and investigating of wrongdoing within government, but allows for reporting outside government in specified circumstances.

Making an internal disclosure

Public officials can report suspected wrongdoing either to their current supervisor (defined in s 8 to mean someone who supervises or manages them) in an agency, or to an authorised officer of their agency or the agency to which they previously belonged. Authorised officers are the principal officer (i.e. the agency head) and officers that the principal officer appoints under the PID Act (s 36).

Making a disclosure internally gives the agency the chance to investigate the matter and remove any danger or correct any wrong practices as quickly as possible.

A public official must use one of the proper avenues to gain the protections available under the PID Act. This means that a public official will not receive these protections if they give the information to someone outside government like a journalist or union representative, unless the conditions for an external or emergency disclosure are met. They may be in breach of their duty to maintain appropriate confidentiality in relation to official information they have gained in the course of their work, or be subject to other civil, criminal or disciplinary action.



ATTACHMENT B

Rights and responsibilities of disclosers

Rights

A discloser has a right to the protections set out in the PID Act, including protection from reprisals, from civil and criminal liability, and from the disclosure of his or her identity where the disclosure is made anonymously. However, a disclosure does not protect the discloser from the consequences of their own wrongdoing, including where they have been involved in the misconduct that they are reporting. During the PID Act process, a discloser will be:

- advised of the following:
 - any decision that a disclosure is not a disclosure within the meaning of the PID Act;
 - the allocation of their disclosure;
 - the decision of CASA to investigate their disclosure;
 - the estimated duration of the investigation into their disclosure;
 - if CASA decides not to investigate their disclosure, the reasons for that decision and any action that may be available to the discloser under other Commonwealth laws;
 - if an investigation is conducted under the PID Act and an extension of time is granted by the Ombudsman or IGIS, the progress of the investigation; and
 - the outcome of the investigation (including provision of a copy of the investigation report except to the extent that it would be exempt for the purposes of Part IV of the Freedom of Information Act 1982, would require a national security or other protective security clearance, contains intelligence information or contravenes a designated publication restriction as defined in the PID Act).
- given support in accordance with paragraph 3.6 of the procedures.
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

Responsibilities

A discloser must:

- comply with the PID Act requirements and the procedures set out in this document when making a PID;
- use his or her best endeavours to assist the principal officer of any agency in the conduct of an investigation;
- use his or her best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act; and
- use his or her best endeavours to assist the IGIS in the performance of the IGIS's functions under the PID Act; and
- report to the Director any detriment the discloser believes he or she has been subjected to as a result of making the disclosure.



ATTACHMENT C

Rights and responsibilities of persons who are the subject of a PID

Rights

An employee of CASA who is the subject of a disclosure will be:

- given support in accordance with paragraph 3.7 of the procedures; and
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

Responsibilities

An employee of CASA who is the subject of a disclosure must:

- use his or her best endeavours to assist the Director of any agency in the conduct of an investigation;
- use his or her best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act;
- use his or her best endeavours to assist the IGIS in the performance of the IGIS's functions under the PID Act;
- comply with action taken by CASA to address risks or concerns in relation to the PID.

An employee who is the subject of a disclosure should also be aware that the outcome of an investigation under the Procedures set out in this document may result in another, different investigation (for example, a Code of Conduct investigation) taking place.



ATTACHMENT D

Definitions of relevant terms in the PID Act

The official PID Act site is found at:

<http://www.comlaw.gov.au/Details/C2013A00133/Html/Text#_Toc361755330>.

Important definitions are located in the following provisions of the PID Act:

Section 26 – meaning of “disclosable conduct”.

Section 29 – meaning of “public interest disclosure”.

Section 8 – general definitions provision.

Section 13 – meaning of “take a reprisal” and “detriment”.

Section 30 – definitions of “contracted service provider” and “Commonwealth contract”.

Section 34 – meaning of “authorised internal recipient”.

Section 35 – description of when conduct “relates to an agency”.

Section 36 – definition of “authorised officer”.

Section 69 – description of who are “public officials”.

Section 70 – description of individuals who are taken to be public officials.