



National Health  
Funding Body

# Public Interest Disclosure Policy

NOVEMBER 2023


# Document information

Document name	Public Interest Disclosure Policy
Document filename	
Trim reference	D21-2382

## Change history

Author	Date	Description	Version
Sab Bonelli	June 2021	New template with minor revisions	1.0
Sab Bonelli	July 2022	Review – minor changes only, RAGC endorsed	1.1
Sab Bonelli	July 2023	Review – updated with changes to the PID Act – 1 <sup>st</sup> July 2023	1.2
Emma Griffin Sab Bonelli	November 2023	Updated to new template	2.0

## Approval

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Date	1 December 2024

Review date    February 2026

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# Introduction

The National Health Funding Body (NHFB) is committed to having in place procedures to facilitate and manage public interest disclosures (PID) relating to the agency.

The *Public Interest Disclosure Act 2013* (PID Act) promotes the integrity and accountability of the Commonwealth public sector by:

- Encouraging and facilitating the making of disclosures of wrongdoing by public officials
- Ensuring that public officials who make protected disclosures are supported and protected from adverse consequences relating to the making of a disclosure; and
- Ensuring that disclosures are properly investigated and dealt with (ss6, 7).

**Key changes to the PID Act came into effect on 1<sup>st</sup> July 2023.** The changes include oversight of the PID scheme, protections for disclosers and witnesses, integrity wrongdoing, and administrative processes. This policy has been updated to include these changes as they apply to the NHFB.

## PID principles, scope, and context

PID arrangements removes the barriers preventing people who work in the public sector from speaking up about serious problems that impact on public administration. All staff across the public sector have a part to play in ensuring that problems are identified early, appropriate action is taken and those who report wrongdoing are protected from reprisal.

Current and former Commonwealth public sector employees, officers and employees of contracted service providers and other public officials including Board and Committee members, who make a disclosure under the PID Act for the purpose of this Policy shall be referred to as the 'Discloser'.

The PID Act supplements existing avenues for complaints and investigations and recognises the role of specialist investigative agencies. Disclosures can be made or allocated (with consent) to:

- The **Commonwealth Ombudsman (Ombudsman)**
- The Inspector-General of Intelligence and Security (**IGIS**)
- Prescribed investigative agencies as appropriate (such as the Australian Federal Police or the Commonwealth Director of Public Prosecutions)

This is a flexible approach that allows existing investigative processes and the expertise that goes with them to be utilised, while providing the necessary protection to Disclosers.

More information about the Public Interest Disclosure scheme and changes can be found at the [Commonwealth Ombudsman](#) website.

## Oversight of the PID Scheme

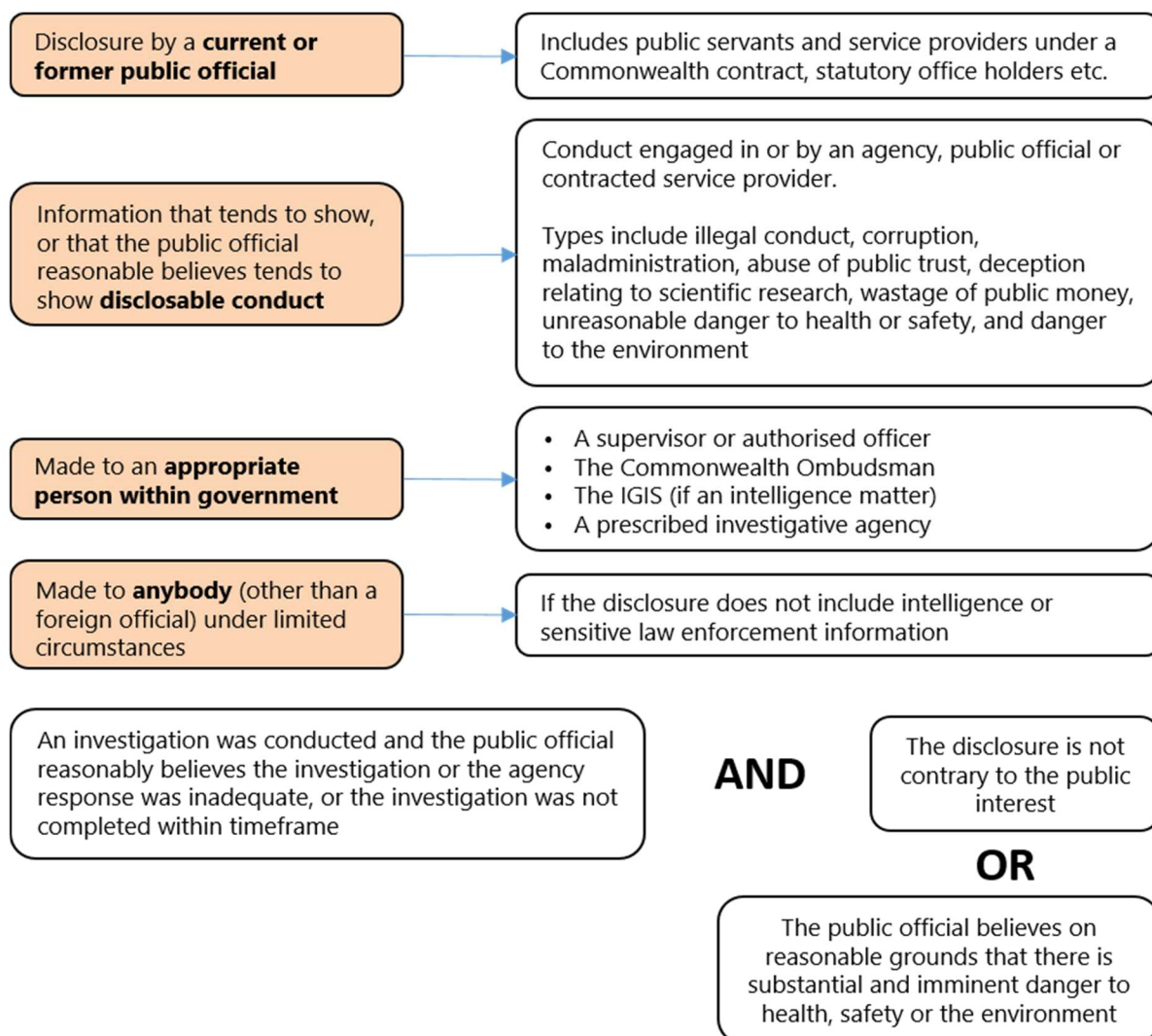
**From 1<sup>st</sup> July 2023**, The Commonwealth Ombudsman or the Inspector-General of Intelligence and Security (IGIS) will receive a copy of all investigation reports and may make recommendations about investigation reports without a complaint having been made.

The Commonwealth Ombudsman will report to Parliament on the PID scheme every six months, instead of annually.

# What is a Public Interest Disclosure?

A Public Interest Disclosure (under s26 (1)) is a disclosure of information, by a public official, concerning suspected or probable illegal conduct or other wrongdoing (referred to as “disclosable conduct”) - Figure 1 below summarises elements of a PID:

**Figure 1** Snapshot of a Public Interest Disclosure<sup>1</sup>



<sup>1</sup> See also [Appendix 1](#) – Overview of the PID Scheme.

With **recent changes to the PID Act**, agencies have been advised to ensure that their PID handling procedures reflect, or are appropriately linked to, guidance on **mandatory referrals** and how to refer a matter to the National Anti-Corruption Commission (NACC).

Rather than have separate internal procedural guidance on how to record and brief internally on referred matters, the NHFB will defer to the **mandatory referral obligations** as appropriate. The NACC Act makes PID officers (meaning staff performing or exercising powers under the PID Act) directly responsible for referring disclosures that involve a corruption matter to the NACC.

For more information on the interactions between the PID Act and the NACC, please visit the **National Anti-Corruption Commission** website.

## Who can make a Public Interest Disclosure?

A person must be a current or former ‘public official’ as defined in ss 69-70 of the PID Act under s 26(1)(a), to make a public interest disclosure. This includes a Commonwealth public servant, statutory office holder or other person who exercises powers under a Commonwealth law.

Individuals and organisations that provide goods and services under a Commonwealth contract (defined in s30(3)) and their officers or employees are also included. For example, subcontractors who are responsible for providing goods or services for the purposes of the Commonwealth contract (s30(2)).

An authorised officer is also able to deem an individual to be a public official (s70) if they reasonably believe the individual has information about wrongdoing and proposes to make a disclosure. Examples where an authorised officer might consider this appropriate include where a former volunteer with an agency, someone who has received funding from the Australian Government, or a member of an advisory committee has ‘inside information’ about the agency’s wrongdoing.

## 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 a contract 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, or
- Is prescribed by the PID Rules (s29(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 (s29(2)). It does not matter if the conduct occurred before or after 15 January 2014, or if the public official or contracted service provider alleged to have committed the wrongdoing has since ceased to be public official or contracted service provider, as the case may be (s29(3)).

## 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.

Disclosable conduct by a public official must be conducted in connection with their position as a public official – conduct<sup>2</sup> that is wholly private and has no bearing on their position as a public official **is not disclosable conduct**.

PID Act (integrity wrongdoing) **changes from 1<sup>st</sup> July 2023** also include personal work-related conduct that are not covered by the PID Act unless:

- The conduct constitutes reprisal action, or
- The significant nature of the conduct would undermine public confidence in the agency.

## Who can a public disclosure be made to?

A disclosure must be made to an appropriate person to gain the protections available under the Act (s26). The Act focuses on the reporting and investigating of wrongdoing within government but allows for reporting outside government in specified circumstances.

### Internal disclosures

Staff can report suspected wrongdoing either to their supervisor (defined in s8) in their team or to an authorised officer of the NHFB or the agency to which they previously belonged. Authorised officers are the principal officer (Chief Executive Officer (CEO)), and **officers** that the Principal Officer appoints under the Act (s36).

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<sup>2</sup> This includes personal-work related conduct, except where this constitutes action or conduct of a significant nature where it undermines public confidence.

## Other people – external and emergency disclosures

A staff member can make a public interest disclosure to other people, including people outside government, in limited circumstances as set out below. Two other restrictions apply to these disclosures, namely that:

- The matter must not include intelligence information or sensitive law enforcement information or concern an intelligence agency, or
- A disclosure may not be made to a foreign public official.

## External disclosure

A staff member who has made an internal disclosure under the Act may make a disclosure to any person if:

- The internal investigation under the Act was not completed (meaning that the report of investigation was not finalised) within 90 days or within a timeframe approved by the Ombudsman.
- They believe on reasonable grounds that the investigation under the Act was inadequate
- They believe on reasonable grounds that the agency took inadequate action after the investigation was completed (whether the investigation was conducted under the Act or under other legislation)
- It is not on balance contrary to the public interest for an external disclosure to be made (s26(1)(2)).

A staff member making an external disclosure must not disclose more information that is reasonably necessary to identify wrongdoing (s26).

## When is it in the public interest for a disclosure to be made?

Matters that reflect private or personal interest are generally not matters of public interest, unless they are so fundamental (such as the rights to privacy) that protecting those interests is seen as being in the public interest.

Individual grievances or workplace conflicts would generally be appropriately dealt with by other existing agencies and public sector mechanisms than be the subject of investigation under the PID Act. However, where the nature of a disclosure or potential disclosure suggest that an individual grievance or workplace conflict could be reasonably construed as a matter more broadly representative or a larger or systemic issue (bullying or harassment matters that may be representative of a culture or bullying or harassment), then further investigation under the PID Act might be appropriate.

# Principal Officer

The **NHFB CEO as the Principal Officer** of the NHFB must establish procedures for facilitating and dealing with public interest disclosures relating to the agency.

The procedures must include:

- Assessing risks that reprisals may be taken against the persons who make those disclosures
- Providing for confidentiality of investigative processes.

The procedures must comply with the standards made under paragraph 74(1)(a) and are not legislative instruments.

The CEO must take reasonable steps to:

- Protect public officials who belong to the agency from detriment, or threats of detriment, relating to public interest disclosures by those public officials
- Ensure that the number of authorised officers of the agency is sufficient to ensure that they are readily accessible by public officials who belong to the agency
- Ensure that public officials who belong to the agency are aware of the identity of each authorised officer of the agency
- Provide ongoing training and education to public officials about the PID Act
- Ensure officials performing functions under the PID Act have appropriate training and education.

The CEO must ensure that appropriate action is taken in response to recommendations in a report under section 51, or any other matters raised in such a report, that relate to the agency.

More information about the responsibilities of Principal Officers can be found [Commonwealth Ombudsman website](#).

# Appointing Authorised Officers (AOs)

As the Principal Officer of the NHFB the CEO may appoint, in writing, Authorised Officers to receive public interest disclosures (s36). Appointed Authorised Officers must be public officials who belong to the agency.

In appointing 'readily accessible' Authorised Officers the CEO should consider such factors as the size of NHFB, the geographical location of staff; and the risk that requiring reports to be made to a particular area or a particular officer, may not encourage certain staff to be forthcoming or may raise a conflict of interest.

The CEO must ensure that staff members who are employed by the NHFB are aware of the identity of each Authorised Officer (s59(3)(c)).

The contact details of Authorised Officers are to be clearly displayed within the NHFB and are to be publicly available on the agency website.

As of December 2023, the NHFB's appointed Authorised Officers are:

- Shannon White, Chief Executive Officer (Principal Officer)
- Beci Imbriano, Director Policy, Planning and Performance
- Tanya Day, Human Resources Manager

The NHFB also publishes its Authorised Officers on its [website](#).

## Responsibilities of Authorised Officers

Authorised Officers have a range of decision-making, notification, and other responsibilities under the Act, including.

- Receiving disclosures from current or former public officials about disclosable conduct (s26)
- Deeming a person to be a public official to facilitate the making of a public interest disclosure (s70)
- Informing a person who may be unaware of the Act requirements, that information the authorised officer reasonably believes could concern disclosable conduct, could be treated as an internal disclosure, explaining the requirements of the Act and advising the person of any designated publication restrictions (as defined in s8) that may affect disclosure
- Assessing reported information to determine if there are no reasonable grounds to believe the information could be considered a PID
- Making any preliminary inquiries necessary to make an allocation decision (s 43(4))
- Allocation all or part of the disclosure to the CEO and/or another agency, with the agency's consent (s43(1) and (6))

- Informing the CEO or each relevant agency, and the Ombudsman, of allocation decisions and associated information (ss44(1), 44(1A))
- Informing the discloser of the allocation decision (s44(2))
- Consenting to the allocation of a disclosure by an authorised officer of another agency (s43(6))
- Advising the discloser of a decision not to allocate, the reasons why and any other course of action that may be available under Commonwealth law (s44(3)).

An individual may have decided to make a disclosure or may want to first seek advice about the process or the protections available to them, and an authorised officer should be prepared to explain what the Act requires (s60).

Where an AO, in the course of performing their functions under Division 1 of Part 3 of the PID Act, becomes aware of conduct which raises a **corruption issue** that they suspect involves serious or systemic corrupt conduct, they must refer to the **NACC**.

## Training

The *Fraud Integrity Essentials* module of the NHFBs mandatory e-Learning package includes a section that will help staff understand their obligations for reporting or dealing with wrongdoing under the PID Act 2013.

If required, additional specialised training can be facilitated externally, for example, training in conducting investigations and procedural fairness requirements.

PID training courses are available through the Commonwealth Ombudsman's office as an external course. If required, employees can register through the Department of Health and Aged Care's Success Factors, noting that the cost of the courses will need to be covered by the NHFB through the normal procurement process.

## Referrals and reporting to the National Anti-Corruption Commission (NACC)

Established under the National Anti-Corruption Commission Act 2022 (the NACC Act), the NACC commenced operations on 1<sup>st</sup> July 2023, to enhance integrity in the Commonwealth public sector by deterring, detecting, and preventing corrupt conduct involving Commonwealth public officials through education, monitoring, investigation, reporting and referral.

The NACC Act allows the Commission to carry out its work independently from government, so their investigations and findings can be impartial and free from influence.

The NACC can investigate:

- Conduct of any person that adversely affects a public official's honest or impartial exercise of powers or performance of official duties
- Conduct of a public official that involves a breach of public trust
- Conduct of a public official that involves abuse of office
- Conduct of a public official or former public official that involves the misuse of documents or information they have gained in their capacity as a public official.

Under the NACC Act, there are mandatory reporting requirements for agency heads, heads of intelligence agencies, and Public Interest Disclosure officers, to refer questions of serious or systemic corruption to the NACC.

More information about the NACC can be found at this [link](#), including how to report corrupt conduct.

## Freedom of information requests

Documents associated with a PID are not exempt under the *Freedom of Information Act 1982* (FOI Act). Requests for access to documents under the FOI Act must be considered on a case-by-case basis.

See also the NHFB's Freedom of Information (Business Rule) Policy **TRIM D20-3575**

## Ensuring confidentiality

The NHFB will ensure every reasonable effort to protect the discloser's identity. It is a criminal offence for a public official who is involved in handling a disclosure to reveal the discloser's identifying information to anyone else without their consent or use it for another purpose, unless it is for the purposes of the PID Act, an investigation by the Ombudsman or another Commonwealth law or prescribed law, or if the information has already lawfully been published (s20).

It is an offence for a person who has information obtained while conducting a disclosure investigation or in connection with their powers and functions under the PID Act to disclose or use the information (s65(1)). The penalty is imprisonment for two years or 120 penalty units, or both.

No offence is committed if the:

- Disclosure or use of the information is for the purposes of the PID Act or in connection with the person's powers and functions under the PID Act
- Disclosure or use is for the purposes of, or in connection with, responding to a disclosure investigation

- Information has previously been lawfully published and is not intelligence information, or is it intelligence information, the CEO has consented to the disclosure or use of this information (s65(2)).

## Protections for disclosers and witnesses

The CEO, as the Principal Officer, is responsible for taking reasonable steps to protect public officials from reprisals.

Public officials are protected from reprisal that is taken because a person believed or suspected that they have made, may have made, propose to make, or could make a public interest disclosure.

**From 1 July 2023**, reprisal is clarified as including harassment or intimidation, harm or injury to a person, and any damage to a person (including their property, reputation or business or financial position), in addition to the existing types of employment-related harm. It includes conduct that causes detriment as well as direct and indirect threats.

Witnesses and staff who assist with PID investigations and/or the handling of disclosures, have comparable protections to disclosers – protection against reprisal and immunity from civil, criminal, and administrative liability.

## Assessing the risk of reprisals

Reprisal occurs when someone causes, by an act or omission, detriment to another person because they believe or suspect that person, or anyone else, may have made or intends to make a PID. This could include an action or omission (or threat of action or omission), or detriment that results in:

- Disadvantage to a person, including dismissal, injury in their employment, discrimination between them and other employees or alteration of their position to their disadvantage
- A physical or psychological injury.
- Intimidation, harassment, or victimisation
- Loss or damage to property
- Disadvantage to a person's career (for example, denying them a reference or a promotion without appropriate reasons).

It is a criminal offence to take, or threaten to take, a reprisal action against anyone in relation to a PID and the penalty is up to two years imprisonment. An official who commits a reprisal action may also be subject to disciplinary procedures, for example for breaching the Australian Public Service Code of Conduct.

A person who makes a PID is protected from reprisal in the following ways:

- It is a criminal offence to cause detriment to a person because it is suspected or believed that they have made or will make a PID
- A Discloser has the right to apply for an injunction to prevent a reprisal

- A Discloser has the right to apply for compensation for loss, damage or injury suffered from a reprisal.

The NHFB must assess the risk of reprisal that may be taken against a person who makes a PID (s59(1)). An assessment of potential risk should be completed as soon as possible after a disclosure is received, or after the NHFB has been notified that a disclosure concerning the agency has been received.

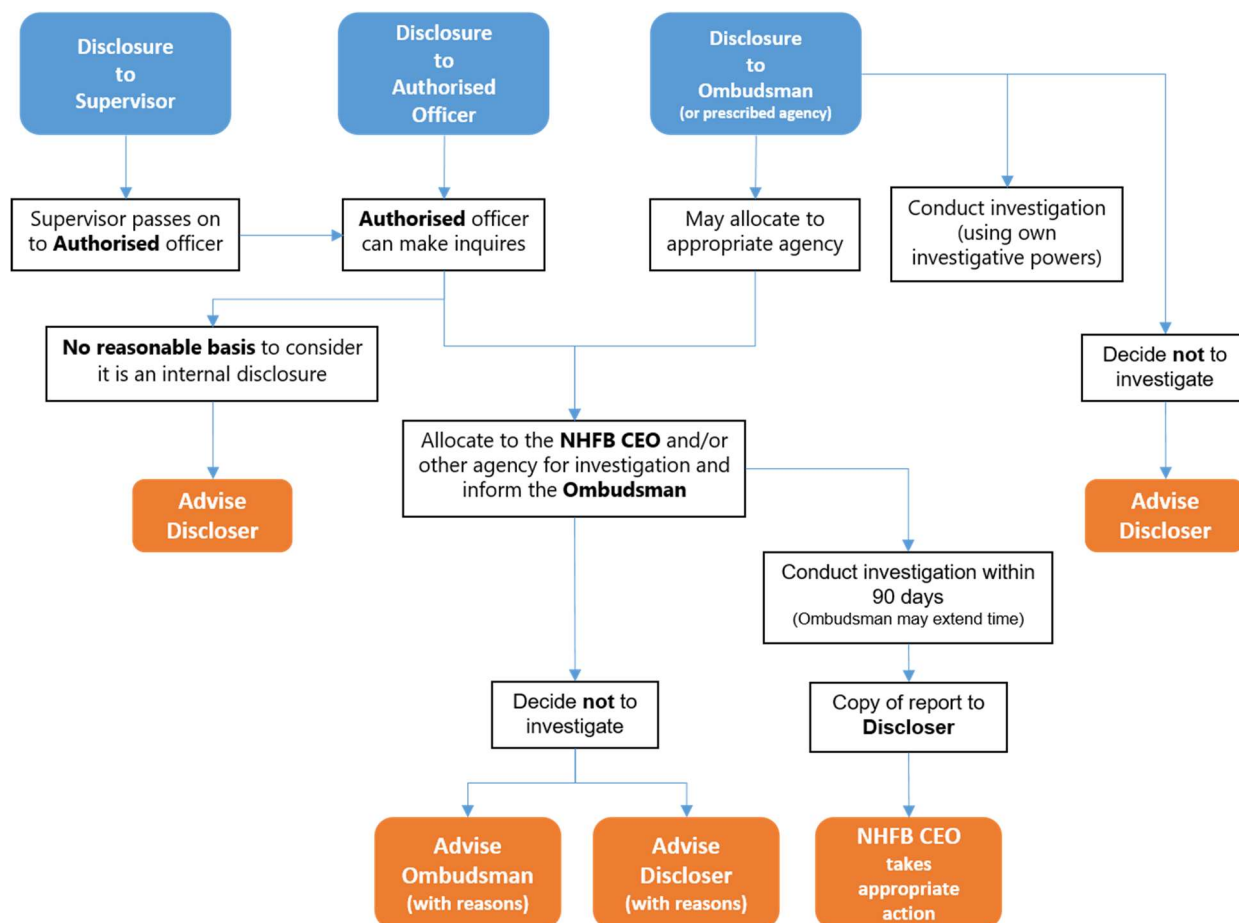
The NHFB may undertake the risk assessment in line with the **guidance** issued by the Commonwealth Ombudsman under the PID scheme.



# Allocating disclosures

Once a report of wrongdoing had been made to a supervisor, manager or Authorised Officer, the Act requires certain steps to be taken – as per **Figure 2**:

**Figure 2** Allocating disclosures



Supervisors have an important role in that they **MUST** refer information that could be a disclosure to an Authorised Officer as soon as reasonably practicable. Furthermore, they **MUST** explain the following matters to a discloser:

- that their disclosure could be treated as an internal disclosure
- the procedures under the PID Act for the disclosure to be given to an authorised officer, allocated to an agency, and investigated by a Principal Officer of the agency to which the disclosure has been allocated
- the circumstances in which a disclosure must be referred to an agency, or other person or body, under another law of the Commonwealth, and
- the civil and criminal protections the PID Act provides to protect disclosers and witnesses from reprisal action.

See also [the Commonwealth Ombudsman, Handling a PID flowchart](#).

Given the size of the agency, the NHFB may opt to refer the disclosure to the portfolio Department of Health and Aged Care (PID Coordination team) to determine whether an investigation is to be undertaken.

As with incidents of alleged fraud, there may be real or perceived conflicts of interest should the disclosure be investigated internally by the NHFB.

## Conducting investigations

An internal disclosure may be investigated in one of two ways:

- Under the PID Act
- Under other legislation applying to the Ombudsman and prescribed agencies.

Investigations under other legislation applying to the Ombudsman and prescribed investigative agencies may use their own separate investigative powers rather than investigating under the PID Act (s49).

## Recordkeeping

Details about how and when a PID was made must be recorded and kept in a secure place and ensures that all action taken regarding the receipt and processing of a PID is reviewable. If the disclosure was given verbally, consideration should be given to asking the Discloser to sign a record of the disclosure. Each disclosure should be given a unique reference number. Note, details of the risk assessment of reprisal, allocation, the investigation, notifications to the disclosure and others should also be kept. The records should be factual and free from personal opinions.

The NHFB is required to provide, to the Ombudsman, certain information about disclosures that they have handled for the purposes of the annual report.

## Criminal matters

An investigator who suspects that information disclosed as part of the internal disclosure, or information that is obtained during an investigation, constitutes evidence of an offence against the Commonwealth, State or Territory law, may disclose that information to a member of a relevant police force (s56(1)).

In cases, where the potential offence is serious (that is, punishable by imprisonment for two years or more), notification of the relevant police force is mandatory (s56(2)).

## Keeping the Discloser informed

A Discloser can easily become concerned or dissatisfied if they feel they are being left in the dark or that nothing is happening. The PID Act requires the Discloser to be notified at various stages in the process, provided the person's contact details are available.

## After an investigation

After an investigation, the CEO will ensure that a report is prepared, and that appropriate action is taken by the NHFB. The CEO will give a copy of the investigation report to the Discloser within a reasonable time of preparing it (s51(4)).

## Notifying the Ombudsman

The PID Act requires agencies to notify the Ombudsman of the following:

- an allocation or reallocation of a disclosure
- a decision not to allocate a disclosure
- a decision not to investigate a disclosure or not further investigate
- an extension of time to investigate a public interest disclosure (PID)
- a finalised investigation
- a stop action direction issued by the National Anti-Corruption Commission.

## Protecting the identity of Disclosers

The Act provides a means for protecting public officials, and former public officials, from adverse consequences of disclosing information that, in the public interest, should be disclosed (s7(1)). Supporting and protecting disclosures and other staff is an important responsibility that is reinforced by the CEO.

## Immunity from liability

A person who makes a PID is not subject to any civil criminal or administrative liability (including disciplinary action) for making the disclosure (s10(1)(a)).

# Support

The NHFB ensures that support is available to all staff through the Employees Assistance Program (EAP).

## Further information

Specific nomination forms / templates are available through the Commonwealth Ombudsman's [website](#).

The ***Department of Health and Aged Care's Fraud and Integrity Risk Management*** area also has appropriate forms, report templates, and notices required for each step in the PID process.

The Commonwealth Ombudsman **factsheet** on the PID Scheme is available [here](#).