

PROCEDURES FOR FACILITATING AND DEALING WITH PUBLIC INTEREST DISCLOSURES

I, Romilly Madew, CEO of Infrastructure Australia, under subsection 59(1) of the *Public Interest Disclosure Act 2013* (the Act), issue *Procedures for Dealing with Public Interest Disclosures* as follows.

The Procedures commence on 8 December 2020.



Romilly Madew

Dated: 8 December 2020

Public Interest Disclosure Act 2013

Public Interest Disclosure Policy and Procedure¹

1. Introduction

Objective

This policy sets out the process for individuals to disclose (whether anonymously or otherwise) their concerns regarding potential wrongdoing, maladministration or suspected unethical, unlawful or undesirable conduct (together referred to as wrongdoing) without fear of reprisal and with the support and protection of Infrastructure Australia (IA).

This document is issued in accordance with s 59 and the standards made under paragraph 74(1)(a) of the *Public Interest Disclosure Act 2013*². It describes the procedures to be followed when making, receiving and dealing with public interest disclosures involving IA.

Words and phrases in italics are defined at the end of this policy.

Policy statement

IA's values align with the *Public Interest Disclosure Act 2013* which is in place to promote the integrity and accountability of the Commonwealth public sector.

Our Values

The infographic consists of five value statements arranged around a central dark teal box. Each statement includes an icon, a title, a description, and a tagline.

- We are independent:** Icon of a globe with a person. Description: "Our independence is a privilege that we use to drive better outcomes. We act with integrity and speak with a credible voice." Tagline: "We represent the community".
- We collaborate:** Icon of three people. Description: "We communicate openly and warmly. We share information, work as a team and build trusted relationships with our stakeholders." Tagline: "We enjoy working together".
- We make a difference:** (Central dark teal box) Icon of a person with a speech bubble. Description: "We use our influence for the benefit of all Australians, we promote best practice, focus on outcomes, we are purposeful, pragmatic and relevant to our stakeholders." Tagline: "We lead change".
- We are respectful:** Icon of a head with a gear. Description: "We value each other and our differences, we treat each other as equals. We are strengthened by diverse voices and engage stakeholders with humility." Tagline: "We embrace diversity".
- We continuously improve:** Icon of a magnifying glass. Description: "We pursue excellence, we are resourceful and diligent, embrace change, look for new ways of doing things and keep learning." Tagline: "We are innovative".

IA encourages a workplace that engenders trust and where staff feel comfortable and confident about reporting wrongdoing. The IA Board and Executive Leadership Team (ELT) support the public disclosure scheme and are committed to carry out risk assessments, will monitor the effectiveness of measures

¹ IA has adopted and adapted the very useful guide for agencies on Procedures for Dealing with Public Interest Disclosures from the Commonwealth Ombudsmans Office. More information on the PID scheme, including fact sheets and guides, is on the Ombudsman's website at www.pid.ombudsman.gov.au.

² In effect from 15 January 2014.

designed to control risks and will deal with reports thoroughly and objectively. If some form of wrongdoing is found, IA will take appropriate action to address it.

Following this policy and procedures will also ensure IA's compliance with the legislation.

Who can make a public interest disclosure?

Public interest disclosures can be made by a current or former employee of IA or a 'public official' within the meaning of the *Public Interest Disclosure Act 2013* (PID Act). If you are a contractor, or an employee of a contractor that provides goods or services to IA, you are also entitled to make a disclosure under the PID Act.

Beyond IA, all public officials and former public officials who belong or belonged to another Commonwealth agency are entitled to make a disclosure under the PID Act. And in some cases, a person who has never been a public official may be able to make a public interest disclosure.

What is a public interest disclosure?

A PID refers to the reporting of suspected illegal conduct or wrongdoing by an agency, public official, or a contracted Commonwealth service provider. This wrongdoing is referred to as 'disclosable conduct'.

Apart from an internal disclosure, there are three other types of public interest disclosure that the PID Act protects. These are

- an external disclosure
- a legal practitioner disclosure
- an emergency disclosure

Anyone seeking further information or considering making a disclosure should contact one of IA's authorised officers.

What is disclosable conduct?

'Disclosable conduct' is conduct engaged in by an agency public official (in connection with their position) or a contracted service provider (or their staff) in connection with a contract, that³:

- contravenes a law
- perverts the course of justice
- is corrupt
- is maladministration including conduct that is unjust, oppressive or negligent
- is based on improper motives
- 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 or the environment
- is an abuse of the public official's position

Excluded matters:

- proper activities of intelligence agencies
- conduct connected to court or tribunals
- disagreements that related only to government policy (and related expenditure)
- actions of parliamentarians

³ ss29, 31, 32, 33 PID Act

2. Reporting a public interest disclosure

How do I report a public interest disclosure?

Disclosures should be made to an Authorised Officer, orally or in writing, who is trained to receive public interest disclosures and can provide information on the process to make a disclosure and the protections given to disclosers under the PID Act.

Anyone seeking further information or considering making a disclosure should contact one of IA's authorised officers by either:

1. Emailing IA at:
Principle Officer/CEO: Romilly Madew – romilly.madew@infrastructure.gov.au
Authorised Officer: Clare Stanwix – clare.stanwix@infrastructure.gov.au
Write 'Confidential – IA PID' in the subject line
2. Writing to the Authorised Officer at Infrastructure Australia, Level 19, 60 Martin Place, Sydney NSW 2000. Mark any envelopes or external covers 'Confidential – IA PID'
3. Telephoning the IA's office on 02 8114 1900 and asking to speak to an IA Authorised Officer for receiving Public Interest Disclosures.

Disclosures can also be made to supervisors or managers under the PID Act who will then be required to forward the disclosure to an Authorised Officer.

In certain circumstances, disclosures can also be made to the Commonwealth Ombudsman. Please refer to the Commonwealth Ombudsman's website for more details.

A potential discloser should not investigate a matter themselves before making a disclosure. Raising concerns without undue delay will help IA to address those concerns.

What information do I need to provide?

You are not required to prove what you suspect is true, as long as you are acting honestly and reasonably believe the information involves disclosable conduct. A [form](#) has been prepared to prompt you to provide as much supporting information as possible to assist IA with determining how to proceed with the disclosure. If you choose to submit your disclosure in writing, please keep the information as clear and as factual as possible, avoid personal attacks, emotive language and speculation.

The completed form[[hyperlink](#)] can be delivered personally, mailed or emailed to IA. Contact details are also included on the form.

A person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.

A person who is considering making a disclosure should be aware that making a disclosure does not entitle them to protection from the consequences of their own wrongdoing.

Can I make an anonymous disclosure?

The disclosure, whether in writing or oral, can be made anonymously. A person who has made an anonymous public interest disclosure may come forward at a later stage to disclose their identity and seek the protections of the PID Act.

The disclosure will be considered anonymous if the:

- identity of the discloser is not revealed and if no contact details for the discloser are provided;
or
- discloser does not disclose their name but does provide anonymous contact details.

Where no contact details are provided, it may prevent an investigation of the disclosure.

Under the PID Act, IA is required to keep the discloser's identity confidential, subject to limited exceptions including the discloser's consent. The person's identity may nonetheless become apparent if an investigation is commenced.

There are a range of circumstances in which a discloser's identity might be revealed. Some examples include:

- to carry out the processes required by the PID Act; or
- to carry out a risk assessment in relation to possible reprisals; or
- telling witnesses in a PID Act investigation; or
- telling the subject of the disclosure, in a PID Act investigation, because it is required as a matter of procedural fairness; or
- for the purposes of the Work Health and Safety Act, to ensure a safe workplace while a disclosure is being investigated.

By identifying themselves to an Authorised Officer a discloser can be:

- Supported through the process and be protected from possible reprisal;
- Contacted by the Authorised Officer to seek any necessary or further information to determine how the matter needs to proceed;
- Contacted by an investigator where further information or assistance is required;
- Kept informed about the progress of the matter including the outcome of the investigation.

Can I tell other people I have made a disclosure under the PID Act?

Generally, if you have made a disclosure under the PID Act, you should not discuss the details of your disclosure with anyone who does not have a need to know about it. Discussions with these people about the content of your disclosure will not be protected by the PID Act, and you may expose yourself to the possibility of legal action or misconduct action by doing this.

Can I change my mind about a disclosure once I have made it?

You cannot withdraw a public interest disclosure once you have made it. But you may tell the Authorised Officer or the investigator that you do not want the disclosure to be investigated. If you do this, this will be a relevant consideration in the investigator deciding whether or not to investigate the disclosure. Further, you may decline to consent to your name and contact details being provided to the principal officer, and doing this could mean that it is not practical to investigate the disclosure.

Protections under the PID scheme

The PID Act protects public officials and former public officials from negative consequences of disclosing information that, in the public interest, should be disclosed. Protections under the PID Act include:

- immunity from civil, criminal or administrative liability;
- protection of the discloser's identity, and
- protection from reprisal.

These protections are available even if the discloser's report of wrongdoing turns out to be incorrect or unable to be substantiated, provided the discloser reasonably believes at the time of the disclosure, that the information tends to show disclosable conduct.

It is an offence to provide identifying information about a person who makes a disclosure without their consent unless authorised by the PID Act⁴.

There are substantial penalties for reprisals and any person who fears reprisal for their disclosure should raise their concerns with the authorised officer dealing with their disclosure.

As mentioned above, a person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.

A person who is considering making a disclosure should be aware that making a disclosure does not entitle them to protection from the consequences of their own wrongdoing.

Once I have made a PID will I be kept informed?

The person who made the disclosure will be kept informed throughout the process. They will be advised:

- when the disclosure is either allocated for investigation, or not allocated because it has been determined not to be a public interest disclosure
- about the principal officer's discretionary powers to not investigate within 14 days of the disclosure being allocated
- if the investigation is to be conducted under the PID Act
- the estimated length of the investigation
- if IA decides not to investigate, the reasons for the decision and any action that might be available to the discloser under other Commonwealth laws
- if an extension of time for the investigation is granted by the Ombudsman and the progress of the investigation
- when the investigation report has been completed.

During the investigation, the discloser will be given:

- information about the ongoing nature of the investigation
- information about the progress of the investigation and reasons for any delay
- advice if their identity needs to be disclosed for the purpose of investigating the matter and an opportunity to discuss any concerns.

How long will the process take?

If the disclosure is made by a current or former public official to an Authorised Officer (or if it is passed to an Authorised Officer by a supervisor) the Authorised Officer must decide whether to 'allocate' the disclosure for possible investigation. They must use best efforts to allocate the disclosure within 14 days of receiving it.

If the Authorised Officer decides that a disclosure is not a PID, they will not allocate it. But they must inform the discloser of this, and inform the discloser of other actions available to them under Commonwealth law.

If an investigation is required, the PID Act specifies that it be conducted and a report completed within 90 days of the date the matter was allocated for investigation. On request, the Ombudsman may grant one or more extensions of time and will inform the discloser and provide reasons for the extension. IA will keep the discloser informed about the progress of the investigation.

⁴ s65 PID Act

What happens at the end of an Investigation?

A copy of the investigation report will be provided to the person who made the disclosure. The report will set out the matters considered, the duration of the investigation, any findings that were made, any action either recommended or taken, any claims or evidence of detrimental action to the reporter, and the agency's response to those claims.

In some cases, where appropriate and necessary, material may be deleted from the copy provided to the discloser.

At the end of an investigation the CEO will take appropriate action in response to recommendations and other matters contained in the investigation report. Actions might include:

- commencing a disciplinary process
- formal counselling of an employee or mediation for a workplace conflict
- referring the matter to the police or another body that can take further action
- an internal audit or other review of an issue or an operational activity
- implementing or changing business processes or practices
- conducting training and awareness sessions for staff.

What options do I have if I am not satisfied?

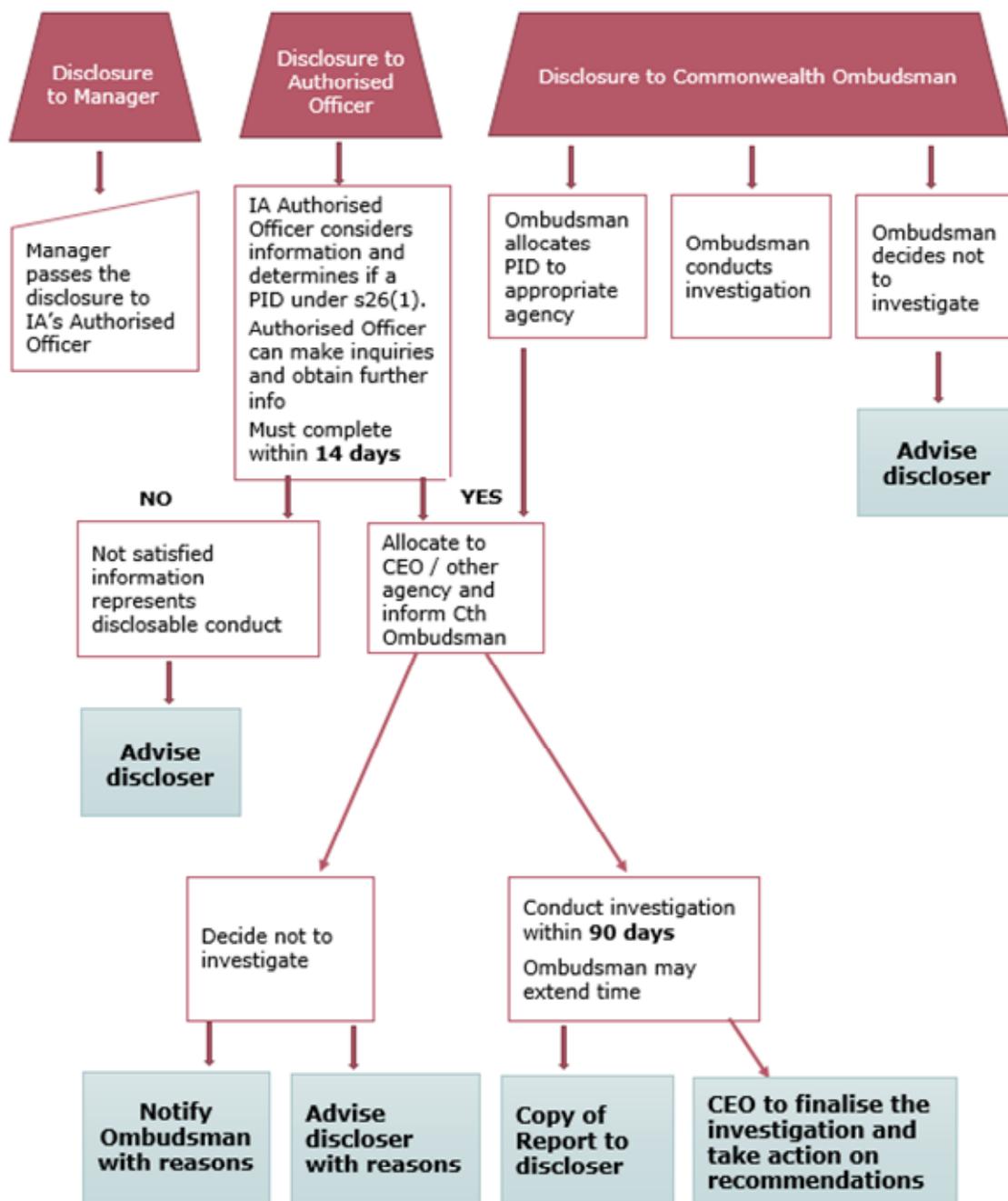
A person who makes a disclosure and is not satisfied with IA's decision not to investigate a matter can raise the issue with the Authorised Officer for further explanation. Similarly, a person who believes on reasonable grounds that an investigation was inadequate or IA's response to the investigation was inadequate, can talk to an Authorised Officer about their options.

If after consulting with IA, the discloser is still dissatisfied with the explanation and believes that IA has not acted appropriately, the Ombudsman may consider the matter on receipt of a complaint about the agency.

The Ombudsman may investigate the complaint or may refer it back to IA for further action. More information is available on the Ombudsman's website at www.pid.ombudsman.gov.au

3. Handling a public interest disclosure

The following flowchart illustrates the way IA will handle a potential public interest disclosure



Procedures for Supervisors / Managers

A supervisor is a person who supervises or manages a public official. Supervisors have a duty under the PID Act to recognise, and to pass on to IA's Authorised Officer, certain disclosures made to them by their subordinates, as soon as practicable.

A supervisor should not investigate a complaint made to them by their subordinate if the complaint is a public interest disclosure. If the complaint is required to be dealt with as a PID, the supervisor does not have the option of dealing with it informally ahead of the PID Act processes being carried out.

However, a supervisor may need to consider the *Work Health and Safety Act* implications of a complaint that is made to them. A supervisor in receipt of a potential PID must assist the Authorised Officer in assessing the risk of reprisal against the discloser.

A supervisor or manager who receives a complaint which may be a PID must not breach the secrecy provisions in the PID Act. However, the secrecy provisions do not prevent a supervisor from seeking advice from an Authorised Officer or from IA's General Counsel about how to deal with the disclosure under the PID Act.

Procedures for Authorised Officers

Authorised Officers are appointed by the CEO of the Agency under section 36 of the PID Act.

Authorised Officers have a role in advising disclosers and potential disclosers about the PID Act. They are responsible for making the key decision as to whether a disclosure will be allocated under the PID Act.

If the Authorised Officer decides that a disclosure is to be dealt with under the PID Act, they will decide which agency is to handle the disclosure, and allocate it to that agency. The Authorised Officer must not provide the name and contact details of the discloser to the CEO of the Agency unless the discloser consents to this.

The Authorised Officer also has the role of deciding whether to deem a person to be a 'public official' for the purposes of a disclosure.

Procedures for PID Act Investigators

The power to act as a PID Act investigator will be delegated by IA's CEO to a public official in IA.

The investigator must

- decide whether to investigate the internal disclosure or not, and inform the discloser of this decision.
- comply with any rules relating to fraud made under the Public Governance, Performance and Accountability Act 2013 if the disclosable conduct concerns fraud.

The Public Interest Disclosure Standard (PID Standard) also imposes a number of process requirements on the investigator's investigation. The investigator may

- make a report, and in certain circumstances, must make a report, to the police, if they suspect on reasonable grounds that a criminal offence has been committed.
- decide that a different investigation, under another law of the Commonwealth, should be carried out.

Where the investigator is proposing to make adverse findings against a person (including that the person has carried out disclosable conduct) they must provide procedural fairness to the person.

The investigator has 90 days, in the first instance, to complete their PID Act investigation, but may seek extensions from the Ombudsman.

The investigator must write a report of their investigation. The PID Act and the PID Standard impose requirements on the investigator about the content of the report.

4. Actions following a PID Investigation

CEO Actions

The CEO of IA must, within a reasonable time after a report of an investigation under the PID Act has been prepared, give a copy of the report to the discloser.

The CEO may delete from the copy of the report given to the discloser any material:

- (a) that is likely to enable the identification of the discloser or another person, or
- (b) the inclusion of which would result in the copy being a document:
 - i. that is exempt for the purposes of Part IV of the Freedom of Information Act 1982, or
 - ii. having, or being required to have, a national security or other protective security classification, or
 - iii. containing intelligence information.

The CEO must delete from the copy of a report given to the discloser any material which would result in the report contravening a designated publication restriction.

Giving information to other persons

Where the person who is the subject of a PID is aware of the allegations that have been made against them, or is aware that there has been a PID Act investigation into their conduct, they should be advised in writing of the outcome of the PID Act investigation. The person does not have a right to:

- be given a copy of the report;
- know the identity of the discloser,

if they were not given this information during the investigation.

Taking 'appropriate action in response' to a PID investigation report

The PID Act requires the CEO of the Agency to ensure that 'appropriate action' is taken in response to recommendations in a PID investigation report, or any other matters raised in such a report, that relate to the Agency⁵.

The term 'appropriate action' might include:

- commencing a disciplinary process
- formal counselling of an employee or mediation for a workplace conflict
- referring the matter to the police or another body that can take further action
- an internal audit or other review of an issue or an operational activity
- implementing or changing business processes or practices
- conducting training and awareness sessions for staff.

Reporting to the discloser on the outcome of 'response action'

Because an internal discloser may be able to make an external disclosure if they believe on reasonable grounds that IA's response action to a PID Act investigation has been inadequate, it is important that the discloser is informed about the response action. For example, it may be that a PID Act investigation report recommends that Code of Conduct action is commenced against a particular person. In such a case, the CEO should ensure that the discloser is advised that Code of Conduct action has been commenced, and they should ensure that the discloser is advised at the end of that process what the outcome was – whether any breach of the Code was found, and if so, whether a sanction was applied to the person investigated.

⁵ See section 59(4) of the PID Act.

5. Record keeping

Where an Authorised Officer is required to keep a record under these procedures, the record may be kept in hard copy or in an electronic form or both. Access to these records will be restricted to the Authorised Officers, delegates (including investigators) or other employees in IA who require access in order to perform some function under the PID Act or for the purpose of IA's response action to a PID Act investigation report.

Where a form is required to be sent under these procedures, a copy of the form must be kept.

All records made for the purposes of the PID Act in accordance with these procedures must be marked as 'In-confidence' Hard copies must be stored in a secure location and electronic copies must be subject to appropriate access restrictions.

Any email messages sent by supervisors, Authorised Officers or PID Act investigators that contain identifying information (within the meaning of section 20 of the PID Act or that contain protected information within the meaning of section 65 of the PID Act) must be clearly marked 'To be read by the named addressee only' in the subject line of the email.

Where a person will cease being an Authorised Officer in the Agency (including because of resignation or movement to another agency), their PID records will be made accessible to another Authorised Officer in IA.

6. Monitoring and evaluation

IA through its CEO will put in place measures to ensure timely reporting of aggregated and anonymised information to the Commonwealth Ombudsman for the purposes of the Ombudsman's Annual Report on the operation of the PID Act.

The Authorised Officer will prepare and provide to the CEO an annual report for the CEO's consideration specifying:

- the number of public interest disclosures received by the Authorised Officer and the nature of the disclosable conduct for each disclosure (by reference to the relevant item or paragraph in the definition);
- any disclosures that have been allocated to IA by another agency's Authorised Officer;
- Advice received from each investigator about every decision made by the Investigators to investigate a disclosure during the financial year; and
- Advice received from each delegate of the CEO who has taken action in response to a recommendation made in an investigation report.

The Company Secretary & General Counsel will send IA's report to the Ombudsman within the time requested by the Ombudsman or as otherwise agreed with the Ombudsman.

Further information

For further information on the operation of the PID Scheme more generally, please see the information provided by the Commonwealth Ombudsman at www.pid.ombudsman.gov.au

The Commonwealth Ombudsman can be contacted on 1300 362 072. The PID Information line is +61 2 6276 3777. Email: PID@ombudsman.gov.au

Definitions

Authorised Officer	means a public official appointed in writing, by the Principal Officer as an authorised officer ⁶ to receive, assess and allocated internal PIDs; or the Principle Officer.
CEO	means the Chief Executive Officer of IA.
Official	Includes current or former public servants, contracted service providers under a Commonwealth contract, statutory office holders and IA staff ⁷ .
Principle Officer	Means the CEO of IA ⁸
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA Rule	<i>Public Governance, Performance and Accountability Rule 2014</i>
Public Interest disclosure	Broadly refers to the disclosure of information by an Official to an Authorised Officer or a supervisor, concerning suspected or probable illegal conduct or other wrongdoing
Supervisor	A person who supervises or manages an Official.

⁶ s36 of the PID Act

⁷ ss69 and 70 of PID Act

⁸ in accordance with s73 of the PID Act

Policy administration

Effective date	December 2020
Version	V1
Policy owner	Company Secretary & General Counsel
Policy changes, updates or amendments	This Policy may be rescinded, changed or replaced at any time at the absolute discretion of the Board of Infrastructure Australia or their authorised delegate.
Status of Policy	This Policy is an accountable authority instruction under section 20A of the <i>Public Governance, Performance and Accountability Act 2013</i> (PGPA Act).
Related policies, procedures and resources	<p><i>Public Governance, Performance and Accountability Act 2013</i></p> <p><i>Public Governance, Performance and Accountability Rule</i></p> <p>Gifts and Benefits Policy</p> <p><i>Public Interest Disclosure Act 2013</i></p> <p><i>Public Interest Disclosure Standard 2013</i></p> <p>Commonwealth Ombudsman – Agency Guide to the Public Interest Disclosure Act 2013</p> <p>Commonwealth Ombudsman information sheets:</p> <ul style="list-style-type: none"> • The Public Interest Disclosure Act 2013 – what’s it all about? • How to make a public interest disclosure • Responsibilities of principal officers of Commonwealth agencies • The role of authorised officers <p>Commonwealth Ombudsman website www.ombudsman.gov.au/pages/pid/</p> <p>Australian Public Service Commission Circular 2013/08: APS whistleblowing scheme and public interest disclosures</p> <p><i>Public Service Act 1999</i> (as amended)</p>
History	V1 Endorsed by ARCC Committee 1 December 2020 and approved by the IA Board on 8 December 2020