

## Public Interest Disclosure

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

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

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

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

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

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

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

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

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

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

### Who can make a PID?

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

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

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

A disclosure may be made without the discloser asserting that the disclosure is made under the Act. Because a disclosure can be made inadvertently, it emphasises the importance of all employees being aware of this type of disclosure and that managers and supervisors be aware of their possible role as a receiving officer.

Essentially this means that a disclosure could be made unintentionally, possibly during a casual conversation, or without the person claiming that the information is provided as a disclosure. For example, while chatting in the kitchen, a colleague might mention that an invoice was received for furniture that was never delivered. This should be addressed as a disclosure.

Similarly, you may find yourself in a situation where you inadvertently witness the disclosure of information which you suspect is wrongdoing. For example, you may overhear a conversation in the lift that a manager has selected their own family member through a recruitment process without declaring a conflict of interest. This should also be addressed as a disclosure.

Although you may not be directly involved in the discussion or actions, you may have nonetheless witnessed wrongdoing. It is strongly encouraged that you report these matters to a supervisor or disclosure officer.

Under the Act all ACT public sector employees (employees) are required to report any fraudulent, corrupt or maladministration that comes to their attention. An employee, a contractor, employee of a contractor, volunteer exercising a function of the entity, or a person prescribed by regulation who makes a disclosure is not liable under the Act to administrative action, including disciplinary action or dismissal because of the making of a disclosure.

## Initial contact

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

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

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

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

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

Whether a person has witnessed disclosable conduct personally or someone has told them about it, they should pass that information to a Designated Disclosure Officer (DDO). This is especially important for those receiving second hand information that indicates potential disclosable conduct, including supervisors and managers receiving information from their staff.<sup>3</sup>

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

The role of the DDO is to:

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

The head of an ACTPS entity is a Designated Disclosure Officer. In the case of **Elections ACT**, this is the Electoral Commissioner. The Deputy Electoral Commissioner also has delegated powers to act as the entity's DDO.

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

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

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

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

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

## **How am I protected if I make a disclosure?**

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

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

## What happens after I have made a disclosure?

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

STAGE	ACTION	RESPONSIBLE OFFICER
<b>Receive</b>	<ul style="list-style-type: none"> <li>▪ Discloser formally makes disclosure to DDO; or</li> <li>▪ DDO formally receives disclosure from the Receiving Officer (RO must provide the disclosure to the DDO immediately)</li> </ul>	Receiving Officer or DDO
<b>Acknowledge</b>	It takes courage to raise a disclosure, therefore the discloser must be afforded appropriate recognition, including a letter of acknowledgement.	
<b>Initial assessment (by the DDO)</b>	<p><u>Refer</u>: If the DDO believes the disclosure is better handled in another ACTPS entity, the matter should be referred.</p> <p><u>Assess</u>: It is imperative for the DDO to make a decision as to whether the disclosure is in fact a PID. If the disclosure is assessed to be a PID, the PID must be investigated.</p> <p><u>Investigate?</u>: If the disclosure is assessed to be a PID, the DDO determines whether their entity should conduct the investigation internally or oversee an external investigation.</p> <p><u>Not investigate</u>: In certain circumstances the DDO may may a decision not to investigate a PID.</p> <p><u>Manage the process</u>: The DDO also has the responsibility to track and manage the process from problem to solution and to notify as required.</p>	DDO
<b>Investigate</b>	Clear and relevant Terms of reference and timeframes must be developed for the investigation.	
<b>Final decision</b>	<p>The DDO makes a decision based on the recommendations of the investigation. The ACTPS entity must take action.</p> <p>The DDO will document their decision on the PID for the information of the discloser, the Commissioner for Public Admin and the head of the ACTPS entity to which the PID relates.</p>	
<b>Report</b>	Relevant information is compiled for the respective ACTPS entity Annual report.	
<b>Review (if necessary)</b>	ACTPS entities should take the opportunities to evaluate internal processes. The Commissioner can review a decision by an investigating entity to refuse to investigate a PID or to end an investigation; and any action taken or proposed to be taken in relation to a PID.	Commissioner for Public Administration

## Commissioner for Public Administration's guidelines

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Guidelines to assist ACT Public Sector entities to meet their obligations under the new legislation have been notified on the legislation register. **Elections ACT has adopted these guidelines.**

## Contacts

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If you are concerned that you have information that should be investigated under the new Act, or have any other queries about the legislation, these should be directed in the first instance to your Senior Executive Responsible for Business Integrity and Risk (SERBIR) – **for Elections ACT this is the Deputy Electoral Commissioner**, or by email to [rohan.spence@act.gov.au](mailto:rohan.spence@act.gov.au).