

Workplace behaviour and review

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Manager People and Workplace

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This instruction sets out the requirements and obligations for appropriate workplace behaviour. It also includes guidance on the mechanisms to support compliance with these requirements and the processes relating to reviews of workplace actions and decisions.

Superseded policies and guidelines are:

- > Review of actions (HRP 3)
- > Workplace harassment and prevention (HRP 7)
- > Procedures for determining breaches of the Code of Conduct and for determining sanctions (HRG 10)
- > Outside employment (HRP 19)
- > Identifying and managing conflicts of interest People Management Instruction (PMI)
- > Disclosures under the Public Interest Disclosure Act 2013 PMI.

This instruction applies to all ACMA employees. This Instruction is considered a reasonably given management direction and employees are expected to apply this Instruction in word and intent.

1 Introduction

A positive, ethical, respectful and courteous workplace enables high performance and encourages a culture in which everyone is engaged and motivated to do their very best. A positive workplace environment is likely to result in less absenteeism and employee turnover, fewer cases of fraud and improved staff wellbeing.

1.1 Introduction

A positive, ethical, respectful and courteous workplace is enabled, in part, through the *Public Service Act 1999* (the PS Act). In particular, Part 3 of this Act sets out the Values, Employment Principles and Code of Conduct which, amongst other things, describe the types of behaviours all Australian Public Service (APS) employees must adhere to, in the course of their APS employment.

The PS Act highlights the responsibility of agency heads to uphold and promote the APS Values and Employment Principles. The PS Act also requires all employees to comply with the Code of Conduct including at all times to behave in a way that upholds the APS Values and Employment Principles. Senior Executive Service (SES) employees have a particular responsibility to uphold the Values and Employment Principles and promote them by personal example and other appropriate means.

ACMA contractors as well as any third parties undertaking activities on behalf of the ACMA must also ensure that their behaviour generally adheres to that described in the PS Act.

APS employees (and contractors) must also ensure that their workplace behaviour complies with the obligations as set out in other relevant legislation most notably those relating to workplace health and safety, governance, anti-discrimination and the reporting of suspected wrongdoings.

As an APS agency, the ACMA is committed to high standards of governance and behaviour and this means that there are high expectations on all its employees to behave appropriately, to be aware of how their behaviour may affect others and to comply with their obligations under the PS Act and other legislation in whatever role they are undertaking within this agency.

Inappropriate behaviour and behaviour which fails to comply with that expected under the PS Act is not acceptable and will not be tolerated in the ACMA.

This instructions aims to:

- > ensure employees are aware of their obligations regarding conduct and behaviour as an APS (and ACMA) employee
- > provide information regarding arrangements in the ACMA to assist with meeting some of these specific obligations
- > set out the processes and procedures an employee should follow when seeking a review of an employment-related action or decision, when concerned about inappropriate behaviour, when engaging in outside employment and where there is a suspected wrongdoing or breach of the Code of Conduct.

2 APS context

All ACMA employees are employees of the Australian Public Services (APS). APS and other relevant legislation provides obligations on the behaviour and conduct of ACMA employees.

2.1 Legislative framework

The following legislation provides the framework for conduct and performance in the Australian Public Service:

- > *Public Service Act 1999*
- > *Work Health and Safety Act 2011*
- > *Sex Discrimination Act 1984*
- > *Disability Discrimination Act 1992*
- > *Age Discrimination Act 2004*
- > *Racial Discrimination Act 1975*
- > *Human Rights and Equal Opportunity Commission Act 1986*
- > *Fair Work Act 2009*
- > *Public Interest Disclosure Act 2013*.

Other relevant legislation is:

- > *Administrative Appeals Tribunal Act 1975*: enabling the review of decisions made under certain legislation (particularly Superannuation legislation, the *Freedom of Information Act 1982*, the *Safety Rehabilitation and Compensation Act 1988* and some secrecy provisions) by the Administrative Appeals Tribunal
- > *Administrative Decisions (Judicial Review) Act 1977*: enabling the review of decisions made under an Act by the Federal Court—it also provides for a person who is affected by a decision to seek the reasons for that decision.

2.2 The Public Service Act 1999

The *Public Service Act 1999* (PS Act) is the key underpinning legislation for all APS employees.

Most notably, Part 3 of the PS Act sets out a number of matters regarding APS employment including, through the APS Values, Employment Principles and Code of Conduct, the behavioural standards that government and the Australian community expect from all APS employees.

Behaviour consistent with these standards strengthens trust and confidence in public administration, supports a workplace culture that is high performing, collaborative and innovative, and provides a secure foundation to guide the APS into the future. These standards set out the commitment to the public interest – they are statements about the essential character and philosophy of the APS, defining what the APS is, and how it should operate. They are intended to:

- > provide the philosophical underpinning for the APS
- > reflect public expectations of the relationship between public servants and the Government, the Parliament and the Australian community
- > articulate the culture and operating ethos of the APS
- > support and inform the APS Commissioner's Directions.

2.3 APS Values

The APS Values are core components of a positive workplace cultural change, supporting stewardship, high performance and leadership and fostering 'one Australian Public Service'. The acronym ICARE provides a way to remember the APS Values.

- > **Impartial**—the APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.
- > **Committed to service**—the APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.
- > **Accountable**—the APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility
- > **Respectful**—the APS respects all people, including their rights and their heritage
- > **Ethical**—the APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

2.4 APS Employment Principles

The APS is a career-based service that:

- > makes fair employment decisions with a fair system of review
- > recognises that the usual basis for engagement is as an ongoing APS employee
- > makes decisions relating to engagement and promotion that are based on merit
- > requires effective performance from each employee
- > provides flexible, safe and rewarding workplaces where communication, consultation, cooperation and input from employees on matters that affect their workplaces are valued
- > provides workplaces that are free from discrimination, patronage and favouritism
- > recognises the diversity of the Australian community and fosters diversity in the workplace.

2.5 APS Code of Conduct

The APS Code of Conduct is a statement of the standards of behaviour and conduct that is expected of APS employees. The Code of Conduct requires that an ACMA employee must:

- > behave honestly and with integrity in connection with APS employment
- > act with care and diligence in connection with APS employment
- > when acting in connection with APS employment, treat everyone with respect and courtesy, and without harassment
- > when acting in connection with APS employment, comply with all applicable Australian laws
- > comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction
- > maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff
- > take reasonable steps to avoid any conflict of interest (real or apparent) and disclose details of any material personal interest of the employee in connection with the employee's APS employment
- > use Commonwealth resources in a proper manner and for a proper purpose

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- > not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment
 - > not make improper use of inside information, or the employee's duties, status, power or authority
 - to gain, a benefit or advantage for the employee or for any other person or
 - to cause, or to seek to cause detriment to the employee's agency, the Commonwealth or any other person
 - > at all times, behave in a way that upholds the APS Values and Employment Principles, and the integrity and good reputation of the employee's agency and the APS
 - > while on duty overseas, at all times behave in a way that upholds the good reputation of Australia
 - > comply with any other conduct requirement that is prescribed by the regulations.

3 ACMA context

The ACMA fosters a productive and supportive workforce by promoting workplace diversity and inclusion, and being proactive in eliminating all forms of harassment and bullying.

3.1 Overview

Consistent with APS requirements, the ACMA is committed to ensuring that all employees work in an environment that is apolitical, impartial, fair, safe and results-oriented. The ACMA expects employees to maintain appropriate standards of conduct, performance and ethical behaviour in accordance with the APS Code of Conduct, other relevant legislation and ACMA instructions and procedures.

In addition, the ACMA has established five key agency values. The ACMA expects its employees to engage with these core values, in addition to ensuring their behaviour aligns with that indicated through the APS Values and Code of Conduct. These key agency values are:

- > **Informed**—to be and to be seen as very literate in new technologies, industry trends and regulatory developments. The ACMA continues to build and maintain an up-to-date, relevant and specialised organisational knowledge base that underpins the ACMA's evidence-informed approach to regulation.
- > **Active**—to initiate projects and drive outcomes—communicating and collaborating closely with key stakeholders. The ACMA will ensure that it delivers quality products within tight timeframes that are relevant and promote the organisation's strategic direction.
- > **Agile**—to identify and implement flexible, tailored solutions, quickly adapting to new and emerging challenges. The ACMA will continue to transform its operations to meet the needs of stakeholders in a rapidly changing communications landscape.
- > **Innovative**—to be proactive and explore new solutions and lateral connections that sit 'outside the square', ensuring that ACMA decisions are wherever possible informed by 'first principles' reviews of options and approaches.
- > **Influential**—to take a lead role as an aspiring thought-leader. The ACMA will continue to maintain a visible profile and seek to influence key stakeholders on major issues of interest.

Other specific obligations are set out in legislation and the details of these requirements are articulated in ACMA management instructions. It is the employee's responsibility to be familiar with, and comply with the obligations and requirements of these instructions.

3.2 Creating a diverse, positive and respectful ACMA workplace

All ACMA employees are required to actively contribute to the creation of a diverse, positive and respectful workplace. Respectful and courteous behaviour enables the development of positive workplace relationships and includes treating others politely, fairly, honestly and objectively, in a non-discriminatory manner that recognises a person's rights and personal dignity.

Employees can actively contribute to the creation of this workplace by:

- > upholding the APS Values and Employment Principles and behaving consistently with the requirements of the Code of Conduct
- > following all ACMA instructions and guidelines

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- > treating others with respect and building positive working relationships
 - > not tolerating and actively preventing discrimination, harassment and bullying
 - > working cooperatively with others including by building an understanding of their perspectives in order to achieve objectives or reach agreement
 - > managing employee performance in an appropriate and fair manner including by giving and receiving constructive feedback that is evidence-based and delivered in an appropriate manner as part of normal day-to-day work activity
 - > coming to work fit for duty and performing job responsibilities in a safe, secure, productive, and effective manner during the entire time in the workplace
 - > taking all reasonably practicable steps to protect their own health and safety as well as the health and safety of others in the workplace
 - > questioning a colleague's behaviour if it may be perceived to be unacceptable
 - > promptly reporting incidents of suspected misconduct.

3.3 Creating a workplace free from harassment and bullying

The Code of Conduct outlines the requirement for an APS employee, when acting in the course of APS employment, to treat everyone with respect and courtesy, and without harassment.

The Australian Public Service Commission (APSC) adopts the Macquarie Dictionary definitions of respect and courtesy. Respect is defined as 'esteem or deferential regard felt or shown' and courtesy as 'excellence of manners or behaviour; politeness'.

Everyone in the workplace deserves to be treated with dignity and respect. All ACMA employees share the obligations and responsibility for creating respectful and courteous workplaces, to work harmoniously with others and avoid all forms of discrimination.

The requirement to treat everyone with respect and courtesy includes colleagues, other APS employees, clients and other members of the public. It also includes treating everyone with civility and tact even when faced with behaviour from others which may be hostile or rude.

Workplace bullying is defined in the *Fair Work Act 2009* as repeated and unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety.

Repeated refers to persistent behaviour and it can involve a range of behaviours over time.

Unreasonable behaviour means behaviour that a reasonable person, having regard to the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

Health is defined in the *Work Health and Safety Act 2011* as both physical and psychological health.

Risk to health and safety includes the risk to the emotional, mental or physical health of the person(s) in the workplace.

It should be noted that receiving negative feedback on work performance or work related behaviour may cause distress to an employee and a manager should provide this feedback with sensitivity and care, recognising the diverse backgrounds of employees and in accordance with ACMA's instructions on the management of underperformance.

However, workplace bullying and harassment must not be confused with legitimate comment and advice from a manager on an employee's work performance or work-related behaviour which is consistent with the agency's performance management and/or conduct and ethical behaviour framework. Nor should it be confused with legitimate and courteous

comment and/or feedback on working arrangements, whether originating from managers to employees or from employees to managers.

Legitimate feedback from managers on work performance or work-related behaviour is intended to assist employees to improve their work performance or the standard of their behaviour. It is essential that comment on an employee's work performance and behaviour does not become comment on the employee as a person and that objectivity is maintained in any work performance counselling.

Discussion of career development and planning during performance feedback is a legitimate role for managers whereas attempts or threats to diminish the career prospects or development opportunities of an employee can never be legitimate.

Attachment A sets out information about the types of behaviour that are typically identified as being bullying and harassment and the complaint and resolution processes available to employees when they believe they (or others in the workplace) have been bullied or harassed.

3.4 ACMA Workplace Diversity Plan

The key objectives of the ACMA Workplace Diversity Plan are to promote awareness of workplace diversity principles, to enable these principles to be reflected in everyday management and workplace practices, to develop a supportive workplace culture and to provide a discrimination and harassment free workplace. The ACMA Workplace Diversity Plan can be accessed [here](#).

3.5 Identifying and managing conflicts of interest

ACMA employees must remain independent, impartial and unbiased when performing their official duties. Identifying and dealing with actual, perceived or potential conflicts of interest are important parts of maintaining an ethical culture and ensuring compliance with the APS Code of Conduct.

The ACMA recognises that individuals may have a range of legitimate interests outside of the public sector environment and/or the immediate workplace. It is the responsibility of the employee to ensure that these interests do not conflict with their official responsibilities or create the perception of a conflict of interest.

Attachment B sets out specific arrangements to assist employees to meet their obligations in relation to conflicts of interest, including:

- > information about those obligations
- > guidance on how to identify and manage common sources of conflict
- > procedures to help employees work through actual or potential conflict of interest issues in a structured way with their managers.

3.6 Engaging in external employment

As required by the APS Code of Conduct, ACMA employees interested in engaging in work other than with ACMA (while employed at the ACMA) need to ensure that this external employment does not conflict with or adversely affect the performance of their official duties within the ACMA. External employment is work of any kind (whether paid or unpaid) undertaken for an employer or organisation other than the ACMA.

Employees must obtain prior written approval to engage in paid external employment and this is termed '**notifiable external employment**'. Notifiable external employment is any kind of **paid work** that is performed outside an employee's normal duties with the ACMA and not in the capacity of an employees of the ACMA.

Attachment C sets out detailed information including the key considerations for employees seeking to engage in external employment as well as the approval processes for notifiable external employment.

4 Review and complaint

As an APS agency, the ACMA is committed to high standards of governance and behaviour. The ACMA expects all its employees to behave appropriately, to be aware of how their behaviour may affect others and to comply with their obligations as APS employees in whatever role they are undertaking as an employee of the agency. Inappropriate behaviour and behaviour which fails to comply with that expected under the PS Act is not acceptable and will not be tolerated in the ACMA.

4.1 Overview

All ACMA employees have obligations to behave in ways that are consistent with legislation, policy and instructions, and to comply with specific requirements set out in legislation and policy and any other requirement that is binding on behaviour and conduct.

In addition to understanding their obligations in relation to appropriate workplace behaviour, employees should be aware of the mechanisms in place or available to assist them to meet these obligations, to take action where they have concerns that these obligations are not being met or to seek a review of an employment action or decision that directly impacts them.

Every employee is required to report a suspected breach of the Code of Conduct as soon as practicable.

4.2 Seeking a review of actions

Provisions of the *Public Service Act 1999* (PS Act), allow ACMA employees (other than Senior Executive Service (SES) employees) to apply for a review of actions or decisions that relate to their APS employment. Before making a formal request for a review of actions, employees and managers are strongly encouraged to use their best endeavours to resolve issues through informal, amicable discussions wherever possible.

Attachment D sets out further information about procedures for Review of Actions.

4.3 Resolving concerns about bullying and harassment

The Code of Conduct provides that an APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment.

All workplace harassment or bullying complaints will be taken seriously and action to facilitate resolution will be undertaken promptly. Employees who believe they or others may be the target of workplace bullying or harassment and those who have been accused of workplace harassment may seek assistance from a Harassment Contact Officer, People and Workplace Section, and/or an ACMA manager.

Attachment A sets out information about the types of behaviours that are typically identified as being bullying and harassment and the complaint and resolution processes available to employees when they believe they (or others in the workplace) have been bullied or harassed.

4.4 Dealing with suspected breaches of the Code of Conduct

The APS Code of Conduct is the legal basis for the ACMA to take disciplinary action against an employee. The APS Code of Conduct is legally enforceable under the PS Act. The Act also sets out the sanctions that can be imposed if an employee is found to have breached the Code.

The ACMA takes seriously any instances where the Code is breached. Every employee is required to report a suspected breach of the Code of Conduct as soon as practicable. The ACMA will determine by reference to the circumstances of each case, how to respond to an alleged breach of the Code.

Attachment E sets out the ACMA procedures for determining breaches of the Code of Conduct and for determining sanctions.

4.5 Dealing with public interest disclosures

The *Public Interest Disclosure Act 2013* (PID Act) prescribes a framework for the disclosure and investigation of wrongdoing and maladministration in the APS. A public interest disclosure generally occurs when a current or former public official (the discloser) discloses to their supervisor or manager or an authorised officer information which tends to show, or the discloser believes on reasonable grounds tends to show, one or more instances of disclosable conduct by an agency, public official or contracted Commonwealth service provider.

Attachment F sets out the ACMA's procedures for facilitating and dealing with public interest disclosures.

Attachment A: Resolving concerns about bullying and harassment

Intent and scope

The ACMA fosters a productive and supportive working environment and is committed to eliminating all forms of bullying and harassment.

This attachment provides guidance to ACMA workers about action they can take if they believe they may be the target of, witness to or accused of workplace bullying and harassment.

Any ACMA worker experiencing, or witnessing workplace bullying is encouraged to take action and to speak out. All concerns about workplace bullying will be taken seriously and treated sensitively and in confidence.

Workplace bullying

Workplace bullying occurs when a person or a group of people repeatedly behaves unreasonably towards a worker or a group of workers at work AND the behaviour creates a risk to health and safety.

Bullying behaviour may involve any of the following types of behaviour:

- > aggressive or intimidating conduct
- > belittling or humiliating comments
- > spreading malicious rumours
- > teasing, practical jokes or 'initiation ceremonies'
- > exclusion from work-related events
- > unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level
- > displaying offensive material
- > pressure to behave in an inappropriate manner.

However, this behavior must be repeated and unreasonable and must create a risk to health and safety in order for it to be bullying.

Bullying does not include reasonable management action carried out in a reasonable manner. Reasonable management action may include for example:

- > performance management processes
- > disciplinary action for misconduct
- > informing a worker about unsatisfactory work performance or inappropriate work behaviour
- > directing a worker to perform duties in keeping with their job
- > maintaining reasonable workplace goals and standards.

Resources and possible actions

There are a range of resources available to assist and inform workers in relation to workplace bullying and harassment. Workers who believe they have experienced or

witnessed bullying and harassment, or if bullying and harassment allegations have been made against them are strongly encouraged to avail themselves of these resources including:

The ACMA Intranet: [Working Together](#) intranet page.

The Employee Assistance Program (EAP): The ACMA, through its EAP, provides access for employees and their family members to a free, short-term, solution focused, confidential and professional counselling service to assist with work related or personal issues. Further information is available on the [Employee Assistance Program](#) intranet page.

The Harassment Contact Officers Network: The Harassment Contact Officer (HCO) Network is a network of ACMA employees who are trained to assist anyone experiencing workplace bullying or harassment. They are also available to assist managers and supervisors to deal with a harassment issue as well as anyone accused of workplace bullying or harassment.

The names and contact details of ACMA Harassment Contact Officers are available on the [intranet](#).

The role and responsibility of the HCO is to provide relevant information to people making inquiries about workplace harassment. The HCO will also:

- > provide information and support to those experiencing or witnessing workplace harassment, **or** to those against whom allegations of bullying and harassment have been made
- > maintain confidentiality to ensure the privacy of the individuals concerned
- > raise awareness amongst workers about workplace harassment issues and their rights and responsibilities in relation to those issues
- > contact the Manager, People and Workplace if aware of an issue that is not being resolved (in particular if it poses a threat to worker safety).

It is not appropriate for a Harassment Contact Officer to give confidential information and assistance to both parties involved in a particular matter or to:

- > form part of an investigation team
- > be involved in taking disciplinary action, and/or
- > act as an advocate for a worker.

All HCOs receive formal and regular training on relevant legislation, conflict resolution skills and their role as a HCO.

Workers can consider other action including:

- > speaking to their supervisor or other ACMA manager
- > speaking to the Manager, People and Workplace
- > implementing informal resolution steps (as appropriate) as detailed below
- > requesting formal resolution
- > contacting the Fair Work Commission to apply for an order to stop the bullying.

Resolution options

Informal resolution

Depending on the circumstances, the nature of the alleged harassment, and the preferences of the person alleging harassment, it may be possible to resolve the matter through informal processes such as:

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- > raising the issue informally with the person concerned in an attempt to have the issue resolved through discussion,
 - > writing a personal and confidential letter to the person(s) concerned outlining their behaviour and the actions considered offensive and asking that those actions stop. Note: the letter should be factual and directed solely at securing the desired change in behaviour. Care should be taken to avoid making any interpretation or other comment which may inflame the situation.
 - > a mediated meeting arranged by a manager or supervisor.

Informal resolution is usually appropriate where:

- > the allegations are of a less serious nature but the person alleging the behaviour wants the behaviour to cease
- > the individual alleging the behaviour wishes to pursue an informal resolution
- > the parties are likely to have ongoing contact with one another and the complainant wishes to pursue an informal resolution so that working relationship can be sustained.

Formal resolution

Formal resolution of a complaint is managed in accordance with the ACMA's Procedures for Dealing with suspected breaches of the Code of Conduct (Attachment E of this PMI).

Formal resolution is usually appropriate where:

- > informal attempts at resolution have failed to the satisfaction of all concerned
- > the complaint involves serious allegations of misconduct and informal resolution could compromise the rights of the parties
- > the complaint is against a more senior staff member
- > the person alleging harassment also alleges victimisation (as a result of their harassment allegation)
- > the allegations are denied, the person who claims to have been harassed wishes to proceed and further enquiry is required to substantiate the complaint
- > the person alleging harassment wishes to make a formal complaint.

Possible outcomes of a formal resolution could include, but are not limited to:

- > cessation of offensive behaviour
- > a formal apology from the harasser(s)
- > counselling or education on discrimination and harassment for the harasser(s) and, if appropriate, the team, the larger work area, or the whole of the ACMA
- > counselling support for the person subject to harassment
- > determination that an employee has breached the APS Code of Conduct and a recommendation of sanctions
- > a transfer to an alternative work area for the harasser(s) or the complainant (where it is the complainant's preference and if this does not further discriminate against the complainant)
- > a decision that the allegations are false and vexatious (eg, intended to annoy or embarrass).

Fair Work Act

The Fair Work Act provides that a worker who reasonably believes that he or she has been bullied at work can apply to the Fair Work Commission for an order to stop the bullying.

Further information about anti-bullying and the application process for an order to stop the bullying is available on the [Fair Work Commission](#) website.

Further Information

Detailed information on dealing with bullying and harassment is available through our [Working Together](#) intranet pages.

The following links may also be of assistance:

- > [Australian Human Rights Commission](#)
- > [Australian Public Service Commission](#)
- > [APSC Ethics Advisory Service](#)
- > [Fair Work Commission.](#)

Attachment B: Identifying and managing conflict of interest

Intent and scope

The ACMA recognises that individuals may have a range of legitimate interests outside of the public sector environment and/or the immediate workplace. It is the responsibility of the employee to ensure that these interests do not conflict with their official responsibilities or create the perception of a conflict of interest.

This attachment aims to assist employees to meet their obligations in relation to conflicts of interest by providing information about those obligations and guidance on how to identify and manage common sources of conflicts. This attachment also sets out procedures intended to help employees work through actual or potential conflict of interest issues with their managers in a structured way.

Members of the Authority have specific obligations under *the Australian Communications and Media Authority Act 2005* (ACMA Act) regarding disclosure of conflicts of interest. This Instruction only applies to full time Members of the Authority if they have financial delegations under the *Public Service Act 1999* (PS Act) conferred upon them and/or are managing ACMA staff¹.

Secondees and contractors working at the ACMA are required to identify, disclose and manage conflicts of interest as set out in their individual agreements/contracts with the agency.

Statutory requirements

The statutory requirements relating to conflicts of interest are outlined below – these are in addition to obligations employees have under common law to avoid conflicts of interest:

- > The APS Values (section 10 of the PS Act) requires that the APS perform its functions in a professional and objective manner.
- > The APS Code of Conduct (section 13 of the PS Act) requires that an APS employee must
 - take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment and disclose details of any material personal interest of the employee in connection with the employee's APS employment
 - use Commonwealth resources in a proper manner and for a proper purpose
 - not improperly use inside information or the employee's duties, status, power or authority to gain, or seek to gain, a benefit or an advantage for the employee or any other person; or to cause, to seek to cause, detriment to the employee's Agency, the Commonwealth or any other person.
- > Section 15 of the *Public Governance Performance and Accountability Act 2013* requires that a Chief Executive promote the proper use and management of public resources for which they are responsible.

The following Australian Public Service Commission publications are also relevant:

- > [In whose interests? Preventing and managing conflicts of interest in the APS.](#)
- > [APS Values and Code of Conduct in practice.](#)

¹ Members of the Authority who do not have such delegations or management responsibilities are separately advised by the Authority Secretariat and Legal Services Division about their obligations to disclose conflicts of interest

Definitions

A material personal interest, or a **conflict of interest** may be:

- > actual, potential or perceived
- > direct or indirect

A material personal interest, or a conflict of interest occurs when the personal, financial or other interests of an employee could improperly influence the performance of their official duties and responsibilities.

An *actual* conflict is where the employee is in a position to be improperly influenced by their personal, financial, or other interests. A *potential* conflict is where the employee's personal, financial or other interests do not currently, but could in the future, improperly influence the performance of their official duties and responsibilities. A *perceived* conflict of interest is where a person outside the agency has reasonable grounds to believe that the personal, financial or other interests of the employee have or may improperly influence the performance of their official duties and responsibilities, whether or not that is the case.

An indirect conflict of interest may occur if there is a realistic possibility of a person getting an indirect benefit as a result of their actions or involvement in a matter although they are not the direct recipient of the benefit (e.g. an immediate family member receives the direct benefit).

An immediate family member, for the purpose of this attachment, is a person's spouse, partner or dependent child.

A manager, for the purpose of this Instruction, means officers at Executive Level 2 and above who are responsible for managing staff, contractors and secondees. It includes Executive Managers and General Managers and may also include Authority Members where they have been delegated management functions.

Identifying conflicts of interest

It is the employee's responsibility to identify and disclose conflicts of interest, to which they may be subject, even if they think that the interest will not actually impact on the performance of their functions or duties. They must also take reasonable steps to avoid a conflict of interest.

An employee may have personal, financial or other interests which may impact on the performance of their duties. It is important for all employees to be mindful of their interests and how these may influence, or may appear to influence, their actions at work.

A personal interest arises from an employee's personal responsibilities and interests outside work, including those arising from relationships with family or friends. Personal relationships include relationships with anyone whose affairs are closely linked to the employee. This would include family members, good friends, past employers or employees or people with whom the employee has had a difficult or acrimonious relationship. A personal interest may also arise out of relationships based on common interests such as sporting, social or cultural activities.

A financial interest may include an employee's directorships, shareholdings, real estate or trusts, outside employment and the acceptance of gifts. It may also include a service or benefit provided to an employee outside work by an ACMA stakeholder (e.g. a licensee licensed by the ACMA). A financial interest need not be substantial for it to create a conflict or perceived conflict of interest.

A key test for identifying a conflict of interest is whether a reasonably impartial person would think that the employee's personal, financial or other interests conflict, appear to conflict or potentially could conflict, with their official duties or responsibilities.

Conflicts of interest may arise in many circumstances, including:

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- > interaction with industry or members of the public
 - > interaction with the ACMA's suppliers, including the management of outsourced projects, consultancies, and other contracts
 - > involvement in any procurement activity, such as tender processes and other forms of market testing
 - > the carrying out of the ACMA's regulatory and compliance functions
 - > recruitment and selection processes.

Examples of conflicts of interest may include:

- > an employee in a team which conducts investigations owns shares in a company that is being investigated by the ACMA
- > an employee who participates in a community radio station in their personal time is involved with, or in a position to influence, a decision to grant or renew a licence to that (or a competing) community radio station
- > an employee takes part in a selection, promotion or evaluation process with a prospective or current employee with whom they have a personal relationship
- > an employee working in licensing is regularly invited to lunch or drinks with a licensee who pays for their meals and refreshments
- > an employee operates a private business, such as a legal practice or a consultancy service outside of the ACMA's hours, which provides advice to companies or businesses on matters relating to the ACMA (e.g. providing advice on applying for a licence)
- > an employee's partner is a director of a company that is tendering for work at the ACMA.

Disclosure of interests

All ACMA employees are required to make a declaration of interests:

- > on commencement
- > annually
- > where their circumstances change.

Declarations are made through the ACMA's Employee Self-Service (ESS) (part of the Aurion HR Management Information System). Refer to Procedure for recording and managing conflicts of this attachment, for further detail.

The degree of information that is required in a declaration will depend on the position the employee occupies, the sensitivity of work performed, the likelihood that conflicts may occur, and the potential impact of conflicts on the ACMA's ability to undertake its regulatory and compliance activities. Where assessment identifies potential or actual conflicts of interest, further information may also be required.

SES employees, and those acting at the SES level for periods greater than 3 months, are required to make a detailed declaration of interests. This obligation is imposed to ensure, among other things, that the Chair is aware of any private interests or relationships of ACMA employees in leadership which could, or could be seen to, influence the decisions the employees are taking or the advice they are giving.

The Chair may from time to time, in consultation with General Managers, designate positions (designated position) which are considered to attract a disclosure of interests obligation of the kind required of SES employees.

Other employees are required to make a detailed disclosure of interests only in the event that their self-assessment indicates that they have or may have a conflict of interest.

Where their self-assessment results in no conflict of interest being identified then the employee simply declares this via the online form in ESS.

At least once per annum, employees will receive a reminder of their responsibilities under the APS Code of Conduct to behave honestly and with integrity, and to disclose, and take reasonable steps to avoid, any conflict of interest (real or perceived) in connection with their APS employment. All employees will be directed to this Instruction. All employees will undertake a self-assessment to identify and disclose any matters that could result in, or be perceived to create, a conflict of interest.

Managers will monitor completion of these self-assessments by their staff (see Responsibilities of managers below).

As noted above, it is the responsibility of the employee to identify and disclose conflicts of interest, to which they may be subject, even if they think that the interest will not actually impact on the performance of their functions or duties. They must also take reasonable steps to avoid a conflict of interest. Disclosure should occur as soon as the employee becomes aware of the conflict. The declaration of interest procedure outlined above upon commencement and annually, complements but is not a substitute for, this ongoing obligation.

If an employee is in any doubt as to whether there is an actual or potential conflict of interest or their involvement may give rise to a perception of conflict, they should discuss this with their manager in the first instance. If the employee does not consider that the disclosure should be made to their direct manager they may escalate the matter to their Executive Manager or General Manager for consideration.

The employee must disclose all information that may be relevant to determining whether there is, or could be, a conflict of interest. This information will also assist in determining what, if any, action should be taken to manage the conflict.

Responsibilities of managers

It is a manager's responsibility to monitor completion of declarations by new employees and at annual self-assessment.

If an actual, potential or perceived conflict of interest is disclosed by the employee, the manager must discuss with the employee how that conflict is to be managed.

Depending on the nature of issues involved, the manager may also escalate the matter to the relevant Executive Manager, General Manager or the Chair for consideration.

Procedure for recording and managing conflicts

All employees must assist ACMA management to record and manage any conflict of interest.

Within two weeks of commencement of employment, all employees will complete a self-assessment to identify any private or personal interests that conflict with, could be perceived to create or have the potential to conflict with the employee's official duties and record their assessment in ESS using the Declaration of Interests form.

For non-SES employees, the employee's manager will review the assessment and discuss with the employee any issues raised and take appropriate action to manage the conflict, including recording in ESS any agreed action with regard to identified or perceived conflicts. For SES employees and those in designated positions, the assessment will be reviewed by the Chair who will discuss any issues raised and take appropriate action to manage the conflict, including recording any agreed action with regard to identified conflicts.

On 1 April each year, all employees will be required to undertake a self-assessment to identify any matters that could result in, or be perceived to create, a conflict of interest. Employees will record their assessment in ESS using the Declaration of Interests form. Self-assessment must be completed by 15 April.

Should an employee's circumstances change during the year, they should complete a new self-assessment using the Declaration of Interests form available in ESS.

The level of detail provided by the employee will depend on the position they occupy and issues identified through the assessment. Managers will monitor recording of assessments by their staff (see Responsibilities of managers).

If an actual, potential or perceived conflict of interest is disclosed by the employee, the manager (or the Chair in the case of SES and employees in designated positions) must discuss with the employee how that conflict is to be managed and record the outcomes of this discussion (including any follow-up action) in ESS. This record will form part of the Conflict of Interests Register.

Information about possible approaches to managing conflicts of interest is at Avoiding conflict and Options for managing conflicts of interest.

Employees and managers may seek advice about a conflict of interest from the Manager, People and Workplace, the Executive Manager, People and Finance, the Legal Services Division and the Ethics Advisory Service which is part of the Australian Public Service Commission (APSC).

Conflict of Interest Registers

The Office of the Chair will maintain a Conflict of Interest Register for SES employees and employees occupying a designated position.

People and Workplace will maintain a Conflict of Interest Register for non-SES employees.

Registers are maintained on 'Staff in Confidence' TRIM files.

Information on the Registers is sourced from the employee's declaration in ESS. It is treated as having been given in confidence and will only be used for the purpose of identification and management of conflicts of interests.

People and Workplace will provide a bi-annual report to the Chair of matters identified on the Conflict of Interest Register for non-SES employees.

Avoidance of conflicts

ACMA employees should take all reasonable steps to avoid conflicts of interest. Steps which an employee may take may include:

- a) only seeking official information needed for the performance of their duties
- b) divesting shares in a company which is likely to be affected by action or inaction by the ACMA in the area in which the employee usually works (e.g. shares in a media company while working in the media control section)
- c) disclosing to their manager any relevant personal interest (direct or indirect) which could give rise to a conflict with the employee's functions when the employee is first assigned to work on an issue or matter which might give rise to the conflict
- d) not using 'inside' or confidential information gained in the course of their official duties to seek an advantage for themselves or for any other person
- e) disclosing any personal relationships or affiliations with prospective providers when involved in a procurement process
- f) ensuring that any private political or lobbying activities are not presented as, nor could be seen as, representing the ACMA
- g) appropriately disclosing any personal relationships with an applicant for a position when acting as a member of a recruitment selection panel or as a delegate
- h) not accepting any gift, benefit or hospitality from external stakeholders, licensees, suppliers or contractors except in accordance with relevant instructions of the ACMA

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- i) not using ACMA business cards, passes, letterhead or status of employment with the ACMA to enhance their own status or gain a benefit in their private dealings.

An employee or manager may seek advice about a conflict of interest from the Ethics Advisory Service. Among other things, the Ethics Advisory Service can advise on the application and interpretation of the APS Values and Code of Conduct, strategies and techniques for ethical decision-making in the APS and the interpretation of the misconduct and whistleblowing provisions of the PS Act. More information about the Ethics Advisory Service can be obtained from the [APSC website](#).

External and post-separation employment

External employment

All employees must obtain approval from the ACMA before commencing any form of notifiable external employment.

Approval will not be given if the employment conflicts or appears to conflict with the employee's duties. All employees are required to:

- a) Seek approval to engage in any form of notifiable external employment using the [Notifiable Employment Application](#) form.
- b) Inform their manager if they are offered (and propose to accept) notifiable employment outside of the ACMA where a conflict of interest could arise (or be perceived to arise). The employee should outline any relationship between the employment offered and his or her official duties. For these purposes, an offer may include consultancy work and voluntary or community work.
- c) Immediately disclose any conflict of interest as a consequence of the outside employment.

ACMA employees serving on boards or committees should be aware of the potential for conflicts of interest or perceived conflicts of interest. Where the employee identifies a conflict of interest they must absent themselves from relevant discussions and decisions of the committee or board.

Further detail on the requirements including what is notifiable employment is provided in Attachment C to this Instruction.

Post-separation employment

Where an employee intends to take up employment in the private sector after resigning or retiring from the ACMA, all reasonable steps should be taken to avoid conflicts of interest that may arise while the person is still employed by the ACMA. In particular, the employee must inform their manager as soon as practicable and outline any relationship between their official duties and the private sector appointment and any potential conflict of interest the appointment may raise.

A manager who is informed about an employee's pending private sector employment should consider the importance and seniority of the employee's position within the ACMA and the nature of the private sector appointment and its relationship to the employee's current responsibilities within the ACMA in deciding whether a conflict of interest may arise.

If an SES employee is offered and is considering accepting a private sector appointment, the SES employee will inform the Chair as soon as practicable of the job that has been offered and any identifiable conflicts of interest.

If an SES employee proposes to accept an outside appointment, the Chair may, at his discretion, require the employee to sign a Deed of Confidentiality in order to protect and preserve the Commonwealth's Confidential Information. If asked to sign a Deed, the employee will execute the Deed as soon as practicable before commencing post-ACMA employment

A perception of conflict of interest may arise when a former ACMA staff member who works in the private sector seeks to conduct business with the ACMA in their new role. Upon commencing new employment, former ACMA employees should not:

- > seek to influence ACMA employees through placing pressure on ex-colleagues or former subordinates to act partially or leniently in a manner that benefits the former employee or their new employer
- > lobby the ACMA on matters in which they were involved
- > use specific or restricted knowledge obtained through their employment with the ACMA in their new position.

ACMA employees who are required to deal with a former colleague, particularly a former colleague who was a recent senior officer, should inform their manager as soon as practicable. Depending on the nature of the matter, the manager may escalate the matter to their General Manager or to the Chair. The General Manager or Chair may decide that no further step other than notification is necessary, or may direct that steps be taken to address any conflict or apparent conflict which may exist. For example, the General Manager or Chair may direct that the matter be dealt with by a more senior officer.

A recent senior officer is a person who held one of the positions listed below at some time during the two year period before the relevant approach is made to the ACMA:

- > member of the Authority
- > General Manager
- > Executive Manager.

Options for managing conflicts of interest

If a General or Executive Manager suspects that an employee has breached the APS Code of Conduct by not disclosing or taking reasonable steps to avoid a conflict of interest, the matter should be raised with the Executive Manager, People and Finance or the Manager, People and Workplace.

The following is also provided as guidance in relation to options for managing conflicts of interest. Detailed consideration should be given to the particular facts and circumstances of the case before any option is considered or undertaken. You should consult with the People and Workplace Section before deciding to implement a decision to restrict or remove an employee.

Declare and register—a declaration and written record of personal financial and other interests (including relationships) which may give rise to a conflict of interest.

A declaration by an employee of a possible conflict of interest enables consideration of whether there is, in fact, a conflict and, if so, what further action may need to be taken. In some instances the mere declaration is all that will be required. In other instances the declaration may not itself resolve the relevant conflict and additional options may need to be considered to positively resolve, avoid or manage the conflict. The formal recording of personal financial and other interests is appropriate where there is a need for transparency (see the Conflict of Interest Registers).

Restrict—limit the employee's duties or involvement associated with the activity causing the conflict of interest.

Restriction is often the most appropriate management strategy where the employee concerned can be effectively separated from parts of the activity or process, or the conflict of interest is not likely to arise frequently. An example of where this might be appropriate is on a selection panel, where the employee realises that they have a personal relationship with one of the applicants. In this situation, it would be reasonable for the employee to be excused from the panel.

Assign duties to another ACMA employee to oversee part or all of the process that deals with the activity causing the conflict of interest.

Assigning others into the management and decision-making process may be a useful strategy where the potential effects (or perceived effects) of a conflict of interest on the proper performance of the employee's duties are more significant and require more proactive management. An example of this option is a tender process where an impartial person from another Section or Branch could be asked to oversee the selection process.

Remove—the employee is relieved of their duties relating to the activity causing the conflict of interest and re-deployed to another area.

Removal is most appropriate for ongoing conflicts of interest where ad hoc restriction or recruitment of others is not feasible or appropriate. The aim is to remove the employee from all duties related to the conflict of interest for as long as the conflict of interest exists.

An example where this might be appropriate is in a situation where an employee has regular contact with a particular company and has an ongoing personal relationship with a senior manager or Board member of the company. In these circumstances, it might be more appropriate for the employee to perform a role that does not bring them into constant contact with this company. Even if there was no actual conflict in these circumstances there is likely to be a strong perception that the employee has a conflict.

Relinquish—the employee relinquishes the private interest that is creating the conflict.

Instead of managing the public duties involved in a conflict of interest, relinquishing the private interests giving rise to the conflict is often an effective alternative. There may be occasions when the employee's public duty outweighs their attachment to their private interest. Alternatively, the employee may elect to relinquish the relevant private interest rather than have to change their work responsibilities or environment. An example would be if an employee holds shares in a company which is subject to the ACMA's regulation and which can be divested.

Resign – the employee resigns from their position with the ACMA.

Resignation will rarely be necessary, but it may be the only option where a serious conflict of interest arises that cannot be avoided. An employee should resolve a conflict of interest they may have and if managerial remedial action is not effective, they may have no other choice than to resign from their public position.

An example would be where an employee has decided to accept a position in the private sector with a stakeholder of the ACMA, but the position does not commence for six months. It might be appropriate (depending on the circumstances) for the employee to resign from the ACMA to avoid any conflicts during the interim period.

Attachment C: Engaging in external employment

Intent and scope

It is recognised that employees have legitimate interests, including paid and unpaid work, outside their employment with the ACMA. This attachment sets out the obligations on all ACMA employees to ensure that this external employment does not conflict with or adversely affect the performance of their official ACMA duties. These obligations are consistent with the APS Code of Conduct.

Definitions

External employment is work of any kind (whether paid or unpaid) undertaken for an employer or organisation other than the ACMA.

Employees must obtain prior written approval to engage in paid external employment and this is termed '**notifiable external employment**'. An employee who is unsure about whether approval is required should discuss the matter with the Manager, People and Workplace. **Notifiable external employment is any kind of paid work that is performed outside an employee's normal duties with the ACMA and not in the capacity of an employee of the ACMA, including:**

- > **paid employment (including contract employment) with another employer, including APS agencies**
- > **making a speech, presentation or written article, or the pursuit of other activities, if a monetary benefit or benefit in kind is received**
- > **paid employment or work while on leave from the ACMA**
- > **selling or promoting goods (e.g. party plans or home based items)**
- > **participating in the employee's own or family business**
- > **holding a paid or unpaid office in a company (e.g. director)**
- > **any other work that could:**
 - **place the employee in a conflict of interest**
 - **undermine his or her efficiency**
 - **compromise work health and safety**
 - **result in inappropriate use of ACMA resources**
 - **bring the ACMA into disrepute.**

Notifiable external employment does not include an employee undertaking unpaid voluntary work (such as providing assistance for schools, coaching or managing a sporting team, unpaid fundraising for charity). However, any activity of this kind must:

- > be performed in the employee's own time
- > not adversely affect employee performance of his or her duties or lead to work health and safety concerns
- > not place the employee in conflict with his or her official duties or create a perception of conflict
- > not lead to the perception that the employee is representing the ACMA, speaking on behalf of the ACMA or using information that is confidential or particular to the ACMA
- > not compromise the integrity or reputation of the ACMA
- > not involve use of ACMA resources for the activity.

Approval for notifiable external employment

Prior approval

Before commencing any notifiable external employment, approval must be obtained from the delegate (generally the employee's section, executive or general manager). Failure to gain this approval may be a breach of the Code of Conduct.

Relevant considerations

When considering approval for notifiable external employment, the delegate needs to be satisfied that the work:

- > will be performed in the employee's own time
- > will not adversely affect the way the employee performs his or her duties with the ACMA
- > will not place the employee in conflict with his or her official duties or create a perception of conflict
- > will not risk compromising the integrity and good reputation of the ACMA.

Further information about assessing risk is available in the ACMA's Risk Management User Guide.

Approval provisos

Approval to engage in notifiable external employment will be granted for a maximum period of 12 months and on the basis that:

- > ACMA resources (including tools, equipment, facilities such as phone, photocopier, printer, scanner, internet, email or email addresses) are not used for notifiable employment purposes. Apart from the limited personal use permitted under relevant ACMA Management Instructions, special care is needed to ensure that use of such resources does not compromise the reputation of the ACMA, uses Commonwealth resources in a proper manner and does not provide a commercial benefit to the employee and his or her other employer.
- > the notifiable external employment does not interfere with the satisfactory performance of official duties or cause risk to the employees' health and safety
- > there is no conflict of interest or perceived conflict with ACMA employment.

Notifiable external employment while on approved leave

Where an employee proposes to engage in notifiable external employment while on leave, this should be made known at the time of applying for the leave and approval for notifiable external employment requested at that time.

Application

Before formally applying to engage in notifiable external employment, the employee should consider the proposed employment in light of the requirements set out in this Instruction and in the APS Code of Conduct and discuss their intentions with their manager.

Applications for approval for notifiable external employment are made via the [Notifiable External Employment Application](#) form.

If the delegate (Section Manager and above) considering the application has an interest in the specific matter, or the matter is potentially sensitive, the delegate should refer the matter to the relevant Executive Manager, General Manager or the Chair as appropriate.

The delegate will respond to the application in writing advising either that:

- > approval has been given to engage in notifiable external employment and any conditions attaching to that approval, or
- > approval has not been given to engage in notifiable external employment and the reason for non-approval.

Changes in circumstances

A review of approval for notifiable external employment is required every 12 months and also if:

- > the nature or circumstances of the approved employment changes
- > the employee's role or duties within the ACMA change.

If the employee's section manager has changed, then the employee will advise the manager of any approved notifiable external employment.

The delegate will determine if a new application for approval is required to be submitted by the employee and will discuss this requirement with the employee. Where applicable the employee will be required to complete a new application.

Revocation of Approval

Under certain circumstances a delegate may consider that approval for an employee to engage in notifiable external employment should be revoked. These circumstances could include:

- > a conflict of interest situation arising or coming to light, after the approval was granted
- > if an employee's performance or health is being adversely affected by the notifiable external employment
- > if an employee is making use of ACMA property for his or her notifiable external employment.

The delegate should discuss the matter with the employee and if the decision is taken to revoke approval for notifiable external employment, notify the employee in writing, stating the date from which approval is revoked and the reason for doing so.

The delegate must review and reassess approvals for notifiable external employment arrangements in all cases where the employee becomes ill for more than two weeks and/or begins to receive workers compensation payments. While each case should be assessed on its merits, particular attention should be given to the nature of the employee's duties and the likely impact of continued notifiable external employment on the employee's health.

External engagements associated with official duties

An employee preparing a paper or delivering a presentation to a conference or seminar during normal working hours as part of the employee's official duties is not entitled to retain payment for doing so. If a payment is made under these circumstances, the employee should request that the payment be made direct to the ACMA or transfer the payment to the ACMA.

Where payment is received for external employment associated with, but in addition to the employee's official duties, the employee is not required to reimburse payment to the ACMA, provided that the work and the preparation are done during his or her own time and subject to use of ACMA resources permitted under relevant Management Instructions.

An employee should not accept an invitation to perform such work associated with official duties without the approval of the relevant Executive Manager.

Right of Review

An employee not granted approval to engage in notifiable external employment can seek a review of this decision in line with Attachment D of this PMI.

Attachment D: Seeking a review of actions

Intent and scope

This attachment outlines the processes adopted by the ACMA to respond and deal with requests for review of employment-related actions or decisions. All non-SES ACMA employees (both ongoing and non-ongoing) can seek a review of action.

Overview

The Public Service Act 1999 (PS Act) and regulations provide a formal two-tiered process to enable APS employees to seek review of action or decisions that relates to their APS employment.² Formal review consists of a primary review (ordinarily conducted by the relevant agency) and a secondary review (which is conducted by the Merit Protection Commissioner).

While the PS Act and the Regulations provide a formal process, employees are encouraged to seek to resolve any matter or concern that may arise in the workplace on an informal basis. In so doing, the issues of concern may be able to be resolved without the need for a formal review of actions.

Reviewable actions

To be reviewable, the relevant action must be by the Chair³ or an APS employee⁴ and be relevant to the employee's APS employment. 'Action' includes a refusal or failure to act.⁵

There are a number of employment related actions which are excluded from review which include:

- > action about the policy, strategy, nature, scope, resources or direction of the APS or the ACMA
- > action relating to the engagement of an APS employee
- > termination of employment⁶ - that decision may be reviewable under the *Fair Work Act 2009* (Cth).

An action will also not be reviewable, or will cease to be reviewable, in certain instances including where:

- > the application for review is misconceived or lacking in substance
- > the application for review is frivolous or vexatious
- > the employee has failed to apply for a review within time
- > the employee does not have sufficient direct personal interest in the review action
- > the employee has applied to have the action reviewed by a Court or Tribunal and the action may be reviewed by that Court or Tribunal
- > the employee has previously applied for a review of the action under Division 5.3 of the Regulations
- > the employee has applied, or could have applied, to have the action reviewed by an external review body (e.g. Australian Human Rights Commission) and review by

² See subsection 33(1) of the PS Act and Part 5.3 of the regulations.

³ See Subsection 33(1) of the PS Act.

⁴ See subsection 33(7) of the PS Act and sub-regulation 5.22(1) of the regulations.

⁵ See subsection 33(7) of the PS Act.

⁶ See subsection 33(1) of the PS Act.

that body would be more appropriate than a review under Division 5.3 of the Regulations, or

- > review, or further review, is not otherwise justified in the circumstances.

Who may apply for a review of actions?

All non-SES ACMA employees⁷ may apply for a review of actions⁸. An ACMA employee includes both ongoing and non-ongoing employees.

Generally, once an ACMA employee leaves the APS, they cease to be entitled to a review of actions.⁹ If, prior to ceasing their employment, an application for review of actions had been lodged but not completed, the application lapses.

The employee seeking review must have a direct personal interest in the relevant action. For example, an ACMA employee is not entitled to seek review of a decision affecting a colleague's employment.

Informal review

ACMA employees are encouraged, in the first instance, to seek to resolve any matter or concern that may arise in the workplace on an informal basis. Ideally, employees should do so as close as possible to the relevant event or action.

Informal resolution is more likely to be achieved if a positive and respectful attitude is maintained. The focus should always be on the issue at hand and not the individual personalities involved in the process.

The issue/s of concern should generally be raised with the employee's supervisor or manager. The supervisor or manager should consider the issues raised and endeavour to resolve the matter as soon as practicable.

It is important that any informal consideration of the issues be undertaken in a timely manner as there are time limits within which a formal review of actions must be commenced.

Employees should note that the informal review may not result in a change to the original decision or action. It also does not act as a stay or prevent the ACMA from proceeding with an action or implementing a decision.

An employee may request a formal review at any time. Any informal review of the action will cease if a formal review application is received.

Formal review of actions by the ACMA

Primary review of actions

An ACMA employee may apply for a formal review of a reviewable action to the Chair or delegate.¹⁰

The application should be made in writing and briefly set out why the review is sought and, if a particular outcome is sought, that outcome (for example, reconsideration of the action or reassignment of duties).¹¹ Any material or documents upon which the employee wishes to rely in support of their application should also be provided.

⁷ Regulation 5.22 of the Regulations restricts the right of review to non-SES employees. An APS employee acting in an SES position whose substantive classification is below SES can apply. If an APS employee is promoted to an SES position their entitlement to apply for a review ceases (see sub-regulation 5.22(2)).

⁸ Subsection 33(1) of the PS Act.

⁹ Subregulation 5.22(2) of the Regulations. A former APS employee may only apply to the Merit Protection Commissioner under regulation 7.2 for a review of their entitlements on separation from the APS.

¹⁰ If the review is of a finding that the employee has breached the Code of Conduct or of a sanction imposed for a breach of the Code of Conduct, the application must be lodged with the Merit Protection Commissioner (see sub-regulation 5.24(2)).

¹¹ See sub-regulations 5.24(1) and (4) of the Regulations.

Employees should note that the review may not result in a change to the original decision or action and that making an application does not act as a stay or prevent the ACMA from proceeding with an action or implementing a decision.

The application must be made within **120 days of the date of the action**.¹² As noted above an application may not be reviewable or may cease to be reviewable if it is not made within time. An application which is not made within the required time will only be considered if there are **exceptional circumstances** to explain the delay.¹³ In making an application which is outside of the required time, the employee must set out their explanation for the delay. The employee should also provide any material or documents in support of that explanation. The lack of awareness of a right to seek a review of actions will not be 'exceptional circumstances'.¹⁴

As soon as practicable after receipt of the application the Chair or delegate will decide whether the action is reviewable and/or whether the application should be referred to the Merit Protection Commissioner for primary review.

Notice that the action is not reviewable

If the action is not considered to be reviewable or has ceased to be reviewable, the employee will be notified in writing and given reasons why it is considered that the action is not reviewable or has ceased to be reviewable. The employee will also be advised of their right to apply to the Merit Protection Commissioner for secondary review.

Referral of an application for review to the Merit Protection Commissioner

An application may, with the agreement of the Merit Protection Commissioner, be referred by the Chair or delegate to the Commissioner where:

- > the Chair was directly involved in the action, or
- > the Chair thinks that it is not appropriate to deal with the action due to the seriousness or sensitivity of the action in question.

Where it is agreed that the application should be transferred, the employee will be notified in writing of referral.¹⁵

The formal review process

The review of actions may be conducted by the Chair or delegate.

The Chair or delegate may also appoint a person to conduct the review and to make recommendations about the matter. The person appointed will be independent and unbiased having no previous involvement or interest in the matter.

The review will be conducted in private and carried out with as little formality, and with as much expedition, as a proper consideration of the matter allows. The review will be consistent with the principles of procedural fairness.

The procedures which will be adopted will depend on the facts and issues involved. It may be appropriate, for example, to deal with the application on the basis of the information provided by the employee. In other instances, it may be necessary and appropriate to undertake further enquiries.

The Chair or delegate may, having commenced the review, discontinue the review if they consider that further review is not justified in all the circumstances.

An application may be resolved by conciliation or other means at any time before the review is completed. In conducting the review opportunities to resolve the issues, by conciliation or mediation will be considered. Employees are therefore encouraged to consider options for conciliation and resolution.

¹² See Item 1 of sub-regulation 5.23(4) the Regulations.

¹³ See sub-regulation 5.23(5) of the Regulations.

¹⁴ See regulation 3.16 of the Regulations which makes it clear that APS employees have an obligation to, among other things, inform themselves of the PS Act and the Regulations.

¹⁵ See regulations 5.25 and 5.28 of the Regulations.

If the application is not resolved and the review is completed, there are a number of possible outcomes including:

- > confirmation of the action
- > variation of the action
- > setting aside of the action and substitution of a new action
- > taking of other appropriate action.

The Chair or delegate will advise the employee in writing of:

- > the decision made on their application
- > the reasons for that decision
- > any action to be taken as a result of the review, and
- > their secondary review rights (see below).

Review of action by the Merit Protection Commissioner

Primary review

The primary review of actions will usually be conducted by the ACMA. However, in some instances, the Merit Protection Commissioner is authorised to conduct a primary review.

An application for a primary review of a finding that the employee has breached the Code of Conduct or of the sanction imposed for a breach of the Code of Conduct must be made to the Merit Protection Commissioner.¹⁶ The application must be made in writing **within 60 days** of the date of the breach finding decision or the decision on sanction.¹⁷

An employee may apply the Merit Protection Commissioner for a primary review of actions where:

- > the Chair was personally or directly involved in the action
- > it is not appropriate for the Chair to deal with the application due to the seriousness or sensitivity of the action in question, or
- > the action is claimed to be victimisation or harassment for having made a previous application for a review of action.¹⁸

The Chair may also, with the consent of the Merit Protection Commissioner, refer an application to the Commissioner for primary review.

The application must be made in writing **within 60 days** of the date of the action.¹⁹

The application for primary review should briefly set out why the review is sought and, if a particular outcome is sought, that outcome.²⁰

The making of an application does not operate to stay the action²¹ (see regulation 5.36 of the Regulations). Any recommendations made by the Merit Protection Commissioner are not binding on the ACMA.

If a primary review is conducted, the Merit Protection Commissioner will write to the Chair and the employee setting out:

- > the recommendations made
- > the reasons for those recommendations.

¹⁶ Subregulation 5.24(2) of the Regulations. See the *ACMA Procedures for determining breaches of the Code of Conduct and for determining sanctions* within this instruction.

¹⁷ See Items 2 and 3 of subregulation 5.23(4) of the Regulations.

¹⁸ Subregulation 5.24(3) of the Regulations.

¹⁹ See Item 4 of subregulation 5.23(4) of the Regulations.

²⁰ Subregulations 5.24(1) and (4) of the Regulations.

²¹ Regulation 5.36.

Any recommendations made following the primary review by the Merit Protection Commissioner are not binding on the ACMA.

Information regarding the conduct of primary reviews by the Merit Protection Commissioner is available at <http://www.apsc.gov.au/merit/review-of-actions>.

Secondary Review

An application for a secondary review to the Merit Protection Commissioner must be made in writing **within 60 days** of:

- > the employee being told that the action is not reviewable or the action has ceased to be reviewable, or
- > the employee being advised of the outcome of the primary review of actions.

The application must be made through the Chair²². The Chair will forward the application and the relevant documents relating to the primary review to the Commissioner within 14 days of receipt of the application for secondary review^{23 24}. A copy of the documents provided to the Commissioner will also be provided to the employee.

The employee should briefly state why the secondary review is being sought as well as what outcome is sought. If the Merit Protection Commissioner considers that the employee is entitled to a secondary review,²⁵ the Commissioner must conduct a review²⁶.

If a secondary review is conducted, the Commissioner must write to the Chair and the employee setting out:

- > the recommendations made
- > the reasons for those recommendations.

Any recommendations made following a secondary review by the Merit Protection Commissioner are not binding on the ACMA.

The Chair or delegate will, as soon as possible, consider the recommendations and make a decision whether to:

- > confirm the relevant action
- > vary the action
- > set the action aside and substitute a new action, or
- > take other appropriate action.

The Chair or delegate will write to the employee and the Merit Protection Commissioner setting out their decision and the reasons for that decision.

The PS Act or the Regulations do not provide for any further rights of review. If an employee remains dissatisfied with the outcome of the secondary review, the employee may wish to seek independent legal advice on their rights of review under general law or the *Administrative Decisions (Judicial Review) Act 1977*.

Information regarding the conduct of secondary reviews by the Merit Protection Commissioner is available at <http://www.apsc.gov.au/merit/review-of-actions>.

Timeframes

An application for a review of actions by the ACMA should be made within **120 days** of the date of the action (see Item 1 of subregulation 5.23(4) of the Regulations).

²² Regulation 5.29 of the Regulations.

²³ Section 5.30 of the Regulations.

²⁴ This regulation does not apply to applications for primary review. The Commissioner may give a written notice to the Chair or APS employee to give information or documents relevant to the review (see regulation 5.35 of the Regulations).

²⁵ See section 5.23 of the Regulations which sets out what APS action is not, or ceases to be, reviewable.

²⁶ See section 5.31 of the Regulations.

An application for a review of actions by the Merit Protection Commissioner (be it a primary or secondary review of actions application) should be made within **60 days** of the date of relevant action (see Items 2-7 of subregulation 5.23(4) of the Regulations).

A late application may be considered if there are **exceptional circumstances** explaining the employee's failure to make the application in time (see subregulation 5.23(5) of the Regulations). Whether exceptional circumstances exist will turn on the facts.

Delegations

The following ACMA officers have been delegated authority to consider matters relating to review of actions.

Primary review of actions:

- > General Manager, all Divisions
- > Executive Manager, People and Finance Branch
- > Manager, People and Workplace Section.

Notify an employee that an action is not reviewable:

- > General Manager, all Divisions
- > Executive Manager, People and Finance Branch
- > Manager, People and Workplace Section.

Refer an application for a review of actions (primary and secondary) to the Merit Protection Commissioner:

- > General Manager, Corporate and Research Division
- > Executive Manager, People and Finance Branch
- > Manager, People and Workplace Section.

Consider and make decisions about recommendations received from the Merit Protection Commissioner following a primary or secondary review of actions:

- > General Manager, Corporate and Research Division
- > Executive Manager, People and Finance Branch.

Attachment E: Procedures for dealing with suspected breaches of the Code of Conduct

Intent and scope

These procedures:

- > Apply in determining whether who is an APS employee of the ACMA, or is a former APS employee who was employed by the ACMA at the time of the suspected misconduct, has breached the APS Code of Conduct (“the Code”) in section 13 of the Act.
- > Apply in determining any sanction to be imposed on an APS employee of the ACMA who has been found to have breached the Code.

These procedures, as they apply to determining whether there has been a breach of the Code, apply to any suspected breach of the Code except for one in respect of which a decision has been made before 1 July 2013 to begin an investigation to determine whether there had been a breach of the Code.

These procedures, as they apply to determining any sanction for breach of the Code, apply where a sanction decision is under consideration on or after 1 July 2013.

In these procedures, a reference to a breach of the Code of Conduct includes a person engaging in conduct set out in subsection 15(2A) of the *Public Service Act 1999* (PS Act) in connection with their engagement as an ACMA employee.

Not all suspected breaches and breaches of the Code need to be dealt with by way of determination under these procedures. In particular circumstances, another way of dealing with a suspected breach of the Code of Conduct may be more appropriate including performance management. The *Australian Public Service Commissioner’s Directions 2013* provide that where the conduct of an APS employee raises concerns that relate to both effective performance and possible breaches of the Code, the Chair must, before making a decision to commence formal misconduct action, have regard to any relevant standards and guidance issued by the Australian Public Service Commissioner.

Availability of Procedures

As provided for in subsection 15(7) of the PS Act, access to these procedures is publicly available through the ACMA’s website.

Breach decision maker and sanction delegate

As soon as practicable after a preliminary assessment has been conducted on a suspected breach of the Code, and the Chair or delegate, has decided to deal with the suspected breach as a determination under the Procedures, the Chair or delegate will appoint a decision-maker (the breach decision-maker) to make a determination under these procedures.

The role of the breach decision-maker is to determine in writing whether a breach of the Code has occurred.

A person may be appointed to assist the breach decision-maker with matters including investigating the alleged breach, gathering evidence and making a report of recommended factual findings to the breach decision-maker.

The person who is to decide what, if any sanction is to be imposed on an ACMA employee who is found to have breached the Code must hold a power under the PS Act to impose sanctions (‘the sanction delegate’).

These procedures do not prevent the breach decision-maker from being the sanction delegate in the same matter.

Any delegation of powers under the PS Act that is proposed to be made to a person who is not an APS employee must be approved in writing in advance to the Australian Public Service Commissioner. This is required by subsection 78(8) of the PS Act. This includes delegation of the power under subsection 15(1) to impose a sanction.

Appointment as a breach decision-maker under these procedures does not empower the breach decision-maker to make a decision regarding a sanction. Only the Chair or a person who has been delegated the power under section 15 of the PS Act and related powers, such as under section 29 of the PS Act may make a sanction decision.

Person or persons making breach determination and imposing any sanction to be independent and unbiased

The breach decision maker and the sanction delegate must be, and must appear to be, independent and unbiased.

The breach decision-maker and the sanction delegate must advise the Chair in writing if they consider that they may not be independent and unbiased or if they consider that they may reasonably be perceived not to be independent and unbiased, for example if they are a witness in the matter.

The determination process

The process for determining whether a person who is, or was, an APS employee of the ACMA has breached the Code must be carried out with as little formality and with as much expedition as a proper consideration of the matter allows.

The process must be consistent with the principles of procedural fairness which generally require that:

- > the person suspected of breaching the Code is informed of the case against them (i.e. any material that is before the decision-maker that is adverse to the person or their interests and that is credible, relevant and significant)
- > the person is provided with a reasonable opportunity to respond and put their case, in accordance with these procedures, before any decision is made on breach or sanction
- > the decision-maker acts without bias or an appearance of bias
- > there is logically probative evidence to support making, on the balance of probabilities, of adverse findings.

A determination may not be made in relation to a suspected breach of the Code by a person unless reasonable steps have been taken to:

- > inform the employee of the details of the suspected breach (including any subsequent variation of those details)
- > where the person is an APS employee, inform the employee the sanctions that may be imposed under subsection 15(1) of the PS Act
- > give the employee a reasonable opportunity to make a written statement, or provide further evidence in relation to the suspected breach within seven days or any longer period that is allowed.

This provision is designed to ensure that by the time the breach decision-maker comes to make a determination, reasonable steps have been taken for the person suspected of the breach to be informed of the case against them. It will generally be good practice to give the person notice at an early stage in the process a summary of the details of the suspected

breach that are available at that time and notice of the elements of the Code of Conduct that are suspected to have been breached.

The breach decision-maker may decide to give the person the opportunity to make both a written and oral statement.

A person who does not make a statement in relation to a suspected breach is not, for that reason alone, to be taken to have admitted to committing a suspected breach.

For the purposes of determining whether a person who is, or was, an APS employee of the ACMA has breached the Code, a formal hearing is not required.

The breach decision-maker (or the person assisting the breach decision maker, if any), where they consider in all of the circumstances that the request is reasonable, must agree to a request made by a person who is suspected of breaching the Code to have a support person present in a meeting or interview they conduct.

Sanctions

In line with the PS Act section 15(1), the agency head may impose the following sanctions on an employee who is found to have breached the Code:

- > reprimand
- > deductions from salary, by way of fine
- > reduction in salary
- > reassignment of duties
- > reduction in classification
- > termination.

The process for determining whether an APS employee has breached the Code must be consistent with the principles of procedural fairness.

If a determination is made that an APS employee has breached the Code, a sanction may not be imposed unless reasonable steps have been taken to:

- > inform the employee of the determination, the sanction(s) that are under consideration and the factors that are under consideration in determining any sanction to be imposed; and
- > give the employee a reasonable opportunity to make a statement in relation to sanctions under consideration.

The sanction delegate may decide to give the employee the opportunity to make both a written and oral statement.

Record of determination and sanction

If a determination in relation to a suspected breach of the Code by a person who is, or was, an APS employee of the ACMA is made, a written record must be made of:

- > the suspected breach, and
- > the determination
- > where the person is an APS employee, any sanctions imposed as a result of a determination that the employee breached the Code.
- > if a statement of reasons was given to the person regarding the determination in relation to a suspected breach of the Code or, in the case of an employee regarding the sanction decision, that statement of reasons or those statements or reason.

The *Archives Act 1983* and the *Privacy Act 1988* apply to ACMA records.

Procedure when an employee is to move to another agency during an investigation

This clause applies if:

- > A person who is an ongoing APS employee in the ACMA is suspected of having breached the Code, and that employee has been informed of the details of the matter, and
- > the matter has not yet been resolved, and
- > a decision has been made that, apart from this clause, would result in the movement of the employee under section 26 of the PS Act to another Agency (including on promotion).

Unless the Chair and the new agency head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.

For the purpose of this section, the matter is taken to be resolved when:

- > a determination in relation to a suspected breach of the Code is made in accordance with these procedures, or
- > the Chair decides that a determination is not necessary.

Attachment F: Procedures for dealing with public interest disclosures

Intent

As of 15 January 2014, the APS whistleblowing scheme has been replaced by the Public Interest Disclosure Act 2013 (PID Act). The PID Act promotes the integrity and accountability of the Commonwealth public sector by creating a framework for facilitating the reporting of suspected wrongdoing and ensuring timely and effective investigation of reports.

Section 59 of the PID Act requires an agency head (the Principal Officer) to make procedures for facilitating and dealing with disclosures under the Act. This document sets out those procedures for the ACMA made by the Chair as the Principal Officer of the ACMA.

The PID Act complements existing notification, investigation and complaint handling schemes in the Commonwealth public sector.

The ACMA encourages the making of reports of disclosable conduct

The ACMA encourages and supports the reporting of wrongdoing by public officials in accordance with the PID Act.

The ACMA will take all reasonably practical steps to support and to protect people who make disclosures under the PID Act.

The ACMA recognises that it is important to have an effective system for reporting and investigating disclosable conduct. Some of the potential benefits of such a system are reducing the work health and safety risks to our workers, saving money and making our programs and processes more efficient. Another potential benefit is increasing the confidence of our workers in the way the ACMA is managed.

The ACMA also recognises that a decision by the ACMA not to deal with a disclosure as a disclosure under the PID Act, when as a matter of law that is how the disclosure should have been dealt with, could be seriously detrimental to the discloser and to the effective operation and the good reputation of the ACMA.

What is a public interest disclosure?

A public interest disclosure may be an internal disclosure, an external disclosure or an emergency disclosure, as set out in s 26(1) of the PID Act.

An internal disclosure is made when a person who is or has been a public official discloses to their supervisor or manager, or an authorised officer of an agency, information which tends to show, or the discloser believes on reasonable grounds tends to show, one or more instances of disclosable conduct

In limited circumstances, a public official may disclose such information to a person outside government—this is known as an external disclosure or emergency disclosure.

What is disclosable conduct?

The full definition of disclosable conduct is set out in section 29 of the PID Act (see Appendix A: Disclosable conduct). That definition applies for the purposes of these procedures.

In summary terms, disclosable conduct is conduct by an Agency or by a public official that:

- > contravenes a law of the Commonwealth, a State or a Territory, or

-
- > occurs in a foreign country and contravenes a law in force in that country that applies to the agency or public official and that corresponds to a law in force in the Australian Capital Territory, or
 - > perverts, or attempts to pervert, the course of justice or involves corruption of any other kind, or
 - > constitutes maladministration, including conduct that:
 - is based on improper motives
 - is unreasonable, unjust or oppressive, or
 - is negligent, or
 - > is an abuse of public trust, or
 - > fabrication, falsification, or deception in relation to scientific research, or misconduct in relation to scientific work, or
 - > results in the wastage of public money or public property or of the money or property of an authority covered by the PID Act, or
 - > unreasonably results in a danger to the health and safety of a person or unreasonably results in or increases the risk of a danger to the health and safety of a person, or
 - > results in a danger to the environment or results in or increases the risk of a danger to the environment, or
 - > is prescribed by the PID Rules, or
 - > is engaged in by a public official that:
 - involves abuse of the public official's position, or
 - could, if proved, give reasonable grounds for disciplinary action against the public official.

It does not matter whether disclosable conduct occurred before or after 15 January 2014, the date the PID Act came into effect.

It does not matter whether the public official who carried out the alleged conduct has ceased to be a public official since the time the conduct is alleged to have occurred, but it is necessary that they carried out the conduct in connection with their position as a public official.

The disclosure process

The PID Act places certain responsibilities on supervisors and managers and Authorised Officers with regard to the actions they must take if a public official makes a disclosure.

Making a disclosure under the PID Act

All public officials and former public officials are entitled to make a disclosure under the PID Act. For the purposes of the PID Act, a 'public official' is a broad term which includes a 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 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.

A public interest disclosure may be made anonymously or openly.

A public interest disclosure may be made orally or in writing.

Where a public official makes a public interest disclosure, they do not have to state or intend that they are doing so under the PID Act.

Where a public official is considering making a disclosure, they should, in the first instance, contact one of the ACMA's Authorised Officers to get information about making a public interest disclosure under the PID Act. The names and contact details of the ACMA's Authorised Officers are set out on the ACMA's [intranet](#) and external website.

Employees in the ACMA may make a disclosure of disclosable conduct to their supervisor or their manager, or to an Authorised Officer, or in certain circumstances, to the Commonwealth Ombudsman.

Employees or former employees or officers of contracted service providers may make a disclosure of disclosable conduct to an Authorised Officer or, in certain circumstances, to the Ombudsman.

Where possible, an employee in the ACMA should make their public interest disclosure to an Authorised Officer rather than their supervisor or manager. Authorised Officers in the ACMA have been trained in receiving public interest disclosures and they can provide information about how to make a public interest disclosure and about the protections given to disclosers under the PID Act

Nothing prevents an employee in the ACMA from making a disclosure to their supervisor or manager

The information contained in a disclosure should be clear and factual, and should, as far as possible, avoid speculation, personal attacks and emotive language. It should contain supporting evidence where that is available to the discloser and should, where possible, identify any witnesses to the disclosable conduct.

A potential discloser should not investigate a matter themselves before making a disclosure.

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 a public interest disclosure has been made, it cannot be withdrawn. But a discloser may state that they do not wish the disclosure to be investigated and they may refuse to consent to their name and contact details being provided to the Chair.

A person who has made a disclosure under the PID Act should not discuss the details of their disclosure with anyone who does not have a need to know about it. Discussions with these people will not be protected by the PID Act.

A supervisor or manager or Authorised Officer who receives a disclosure of disclosable conduct from a public official must deal with the disclosure in accordance with the PID Act, the Ombudsman's Standard and these procedures.

Protections and support for disclosers

Protection

Where a public official makes a disclosure in accordance with the PID Act:

- > the official is immune from civil, criminal or administrative liability (such as a breach of official secret laws or an action for defamation)
- > it is a criminal offence for the official's identity to be disclosed without their consent (subject to some exceptions)

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- > the official is protected from reprisals or threatened reprisals, including injury, dismissal or discrimination between the official and other employees. There are substantial penalties for reprisals
 - > the official's workplace rights are protected under the *Fair Work Act 2009*.

Even if the report of wrongdoing turns out to be incorrect or unable to be substantiated, the public official is still protected under the PID Act, provided they reasonably believe, or reasonably believed at the time of the disclosure that the information tends to show disclosable conduct.

Support

The ACMA will take all reasonably practical steps to support a public official who makes a public interest disclosure.

Information about the PID Act and investigation process is available from Authorised Officers, the Executive Manager, People and Finance Branch and the Manager or Assistant Manager, People and Workplace Section.

It is acknowledged that making a disclosure, and an investigation process, may be stressful. A discloser is encouraged to seek support from the ACMA's Employee Assistance Program (EAP). Whilst a discloser can discuss their general situation and the process with support people, such as an EAP counsellor or family member, they should not provide information that would identify those alleged to have committed wrongdoing or other information that they have a duty to keep confidential. They may also disclose information to a lawyer for the purposes of seeking legal advice or professional assistance in relation to making a disclosure, as such a disclosure is authorised under the PID Act.

Procedures for supervisors and managers

Where a public official in the ACMA discloses information to their supervisor or manager and that supervisor or manager has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the supervisor or manager must, as soon as practicable, give the information to an Authorised Officer in the ACMA.

Where such a disclosure is made to a supervisor or manager, that person must make a written record of the fact of the disclosure, and if the disclosure is not in writing, they must make a written record of the substance of the disclosure and of the time and date of the disclosure.

The person to whom the disclosure has been made must ask the discloser to sign the record of the disclosure, where this is practicable.

At the time a supervisor or manager gives information to an Authorised Officer, they must also give the Authorised Officer their written assessment of any risks that reprisal action might be taken against the person who disclosed the information to the supervisor or manager. Further information about undertaking a risk assessment is available at Appendix C: Assessing risk of reprisal.

Where a supervisor or manager has given information to an Authorised Officer, and where the supervisor or manager is able to contact the discloser, they must inform the discloser that they have given the information to an Authorised Officer in the ACMA and advise the discloser of the name and contact details of that Authorised Officer.

Procedures for Authorised Officers

Authorised Officer must advise disclosers and potential disclosers about the PID Act, where:

- > a person discloses, or is proposing to disclose, information to an Authorised Officer which the Authorised Officer has reasonable grounds to believe may concern disclosable conduct

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- > the Authorised Officer has reasonable grounds to believe that the person may be unaware of what the PID Act requires for the disclosure to be an internal disclosure
 - > the Authorised Officer is aware of the contact details of the person.

The Authorised Officer must:

- > inform the person that the disclosure could be treated as an internal disclosure under the PID Act, and explain to the person what the PID Act requires for a disclosure to be an internal disclosure
- > explain to the person the protections provided by the PID Act to persons who make disclosures under the Act
- > advise the person of any orders or directions that may affect disclosure of the information.

Authorised Officer must decide whether or not to allocate a disclosure

Where a public official, a former public official or a person who has been a declared a public official, makes a disclosure of disclosable conduct directly to an Authorised Officer, the Authorised Officer must make a written record of the fact of the disclosure and, if the disclosure is not in writing, they must make a written record of the substance of the disclosure and of the time and date of the disclosure.

The Authorised Officer must ask the discloser to sign the written record of the disclosure, where this is practicable.

Where a disclosure has been given to or made to an Authorised Officer, the Authorised Officer must use their best endeavours to decide on the allocation of the disclosure within 14 days after the disclosure is given to or made to the Authorised Officer.

An Authorised Officer who receives a disclosure must decide whether they are satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered to be an internal disclosure.

The bases on which an Authorised Officer could be satisfied of this include:

- > that the disclosure has not been made by a person who is, or was, a public official
- > that the disclosure was not made to an authorised internal recipient or supervisor
- > that the disclosure is not about disclosable conduct
- > that the person who is alleged to have carried out the disclosable conduct was not a public official at the time they are alleged to have carried out that conduct
- > that the disclosure is not otherwise a public interest disclosure within the meaning of the PID Act.

Where an Authorised Officer receives a disclosure, the Authorised Officer may obtain information and may make such inquiries as they think fit, for the purposes of deciding the allocation of the disclosure, including for the purposes of deciding whether the disclosure is an internal disclosure or not.

Where an Authorised Officer decides that a disclosure that has been made to them is not to be allocated, they must, where the discloser's contact details are known to the Authorised Officer, advise the discloser in writing as soon as reasonably practical that the disclosure is not to be allocated, by sending to them a completed Form PID-1. The Authorised Officer must keep a record of the day and time the discloser was notified, the means of notification, and the content of the completed Form PID-1.

Where the Authorised Officer is aware of the contact details of the discloser, they must, as soon as practicable after receiving the disclosure and before allocating the disclosure, ask the discloser whether the discloser:

-
- > consents to the Authorised Officer giving the discloser's name and contact details to the Chair, and
 - > wishes the disclosure to be investigated.

The Authorised Officer must make a written record of the discloser's responses (if any) to the questions referred to above. Where a discloser does not respond within seven days to the question of whether they give their consent to the Authorised Officer giving the discloser's name and contact details to the Chair, the discloser is taken not to have consented.

Where a discloser does not respond within seven days to the question of whether they wish the disclosure to be investigated, the discloser is taken to wish the disclosure to be investigated.

Where an Authorised Officer allocates an internal disclosure

An Authorised Officer must obtain the consent of an Authorised Officer in another agency before the first Authorised Officer can allocate an internal disclosure to that agency.

Where an Authorised Officer in the ACMA allocates a disclosure to an agency (including to the ACMA) they must complete Form PID-2 and send it to the Chair.

The Authorised Officer must copy the completed Form PID-2 to the relevant contact officer in the Ombudsman's Office.

Where the Authorised Officer is aware of the contact details of the discloser, the Authorised Officer must inform the discloser of the allocation as soon as is reasonably practical using completed Form PID-3, and keep a record of the day and time the discloser was notified, the means of notification, and the content of the completed Form PID-3.

Where an Authorised Officer in the ACMA allocates a disclosure, they must conduct a risk assessment based on a checklist of risk factors, and having regard to any assessment of risk provided under these procedures by the discloser's supervisor or manager. Further information on assessing risks is available at Appendix C: Assessing the risk of reprisal.

Anonymous disclosures

All persons, including public officials, persons who have been public officials and others, may make disclosures in an anonymous way if they wish to do so.

Where the discloser provides no name and no contact details, or where the discloser provides no name but provides anonymous contact details

A disclosure is anonymous if the identity of the discloser is not revealed and if no contact details for the discloser are provided. It is also anonymous if the discloser does not disclose their name but does provide anonymous contact details.

Merely because a supervisor or manager or Authorised Officer has received a disclosure of one of these kinds that concerns disclosable conduct does not mean that it cannot be treated as a disclosure for the purposes of the PID Act.

Where a supervisor or manager receives a disclosure of one of these kinds they must refer it to an Authorised Officer as soon as is reasonably practicable.

Where an Authorised Officer receives a disclosure of one of these kinds they must consider whether to exercise the power in section 70 of the PID Act to determine on their own initiative that a person who has disclosed information to them is a public official in relation to the making of the disclosure. However, if the Authorised Officer cannot contact the discloser, no determination can be made because the Authorised Officer must be able to give written notice of the determination to the individual (see s 70(1)).

It is anticipated that an Authorised Officer would make this decision having regard to whether it is in the public interest, in the ACMA's interest and in the discloser's interest to have the disclosure dealt with as a disclosure under the PID Act.

Where the discloser requests the Authorised Officer to make this determination, the Authorised Officer must make a decision on this request and must inform the discloser accordingly, and if the Authorised Officer's decision is to decline the request to make a determination under section 70, they must also give the discloser reasons for their decision.

Where an Authorised Officer decides to make a determination under section 70 that the PID Act has effect as if the individual had been a public official, the Authorised Officer should seek assistance from Legal Services on the drafting of the written notice.

The written notice must be given to the individual. A copy of the determination notice should also be given to the Chair at the same time as Form PID-2.

Investigating a disclosure

When a decision is made to investigate a disclosure, procedures based on the PID Act and Ombudsman's Standard should be followed.

Deciding whether or not to investigate

Where an Authorised Officer allocates an internal disclosure to the ACMA, and the Chair has been given the contact details of the discloser, the Chair must, within 14 days after the disclosure was allocated to the ACMA, inform the discloser in writing using Form PID-3A that the Chair may decide:

- > not to investigate the disclosure, or
- > not to investigate the disclosure further.

The Chair must also inform the discloser of the grounds on which that decision may be taken.

The Chair must, as soon as practicable after receiving an allocation of a disclosure from an Authorised Officer (whether from within or outside the ACMA) consider whether to exercise the discretion under section 48 of the PID Act not to investigate the disclosure under the PID Act.

Reasons for not investigating a disclosure

In broad terms, the Chair may decide not to investigate (or may decide to discontinue an investigation already begun) if:

- > the discloser is not a current or former public official (and a determination has not been made under section 70 of the PID Act), or
- > the information does not to any extent concern serious disclosable conduct, or
- > the disclosure is frivolous or vexatious, or
- > the disclosure is substantially the same as a disclosure that has been investigated under the PID Act, or
- > the disclosure is substantially the same as a disclosure that has already been investigated, or is currently being investigated, under another law of the Commonwealth, and
 - it would be inappropriate to conduct another investigation at the same time, or
 - the Chair is reasonably satisfied that there are no matters that warrant further investigation, or
- > the discloser has informed the Chair that they do not wish the disclosure to be pursued and the Chair is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation, or
- > it is impracticable to investigate the disclosure because:
 - the discloser has not revealed their name and contact details, or

-
- the discloser has refused or has failed or is unable to give the investigator the information they requested, or
 - of the age of the information.

Guidance on factors that might go towards the exercise of the power in section 48 is provided in the Ombudsman's 'Agency Guide to the Public Interest Disclosure Act 2013', which can be found [here](#).

Decision not to investigate

Where the Chair decides under section 48 of the PID Act not to investigate a disclosure under Division 2 of Part 3 of the PID Act, the Chair must, as soon as reasonably practicable, inform the Ombudsman of that decision, and of the reasons for that decision, by completing Form PID-6 and sending it to the relevant contact in the Ombudsman's Office.

Where the Chair decides under section 48 of the PID Act not to investigate a disclosure, and where they have been given the name and contact details of the discloser, the Chair must, as soon as reasonably practicable, inform the discloser of that decision, of the reasons for that decision and of other courses of action that may be available to the discloser under other laws of the Commonwealth, by completing Form PID-4 and sending it to the discloser.

Decision to investigate

Where the Chair has considered exercising the discretion under section 48 of the PID Act and has decided that the ACMA is required to investigate the disclosure, and where the Chair has been given the name and contact details of the discloser, the Chair must inform the discloser that the ACMA is required to investigate the disclosure, and inform the discloser of the estimated length of the investigation by completing Form PID-5 and sending it to the discloser.

If the Chair decides to investigate the disclosure and starts to investigate the disclosure but then decides not to investigate the disclosure further under section 48, the Chair must inform:

- > the discloser of that decision, and the reasons for the decision and any other courses of action that might be available to the discloser under other laws of the Commonwealth by completing Form PDI-4A and sending it to the discloser, and
- > the Ombudsman of that decision and the reasons for it by completing Form PID-6A and sending it to the relevant contact in the Ombudsman's office.

Investigators

The Chair may appoint an investigator to assist with an investigation of a disclosure. The appointee may be from inside or outside the ACMA.

Procedures for investigators

Where the Chair has decided to commence an investigation into an internal disclosure, the Chair may conduct the investigation as he thinks fit. However, he must comply with:

- > the Ombudsman's Standard, and
- > to the extent they are relevant to the investigation:
 - the Commonwealth Fraud Control Guidelines
 - these procedures
 - the procedures established under s 15(3) of the *Public Service Act 1999*.

The Chair must be independent and unbiased in the matter, and must not have an actual or perceived conflict of interest.

The Chair may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as they think fit.

When conducting an investigation, the Chair must ensure that a decision whether evidence is sufficient to prove a fact is made on the balance of probabilities.

Interviewing witnesses

Subject to any restrictions imposed by a law of the Commonwealth other than the PID Act, the investigator must ensure that, if a person is interviewed as part of the investigation of an internal disclosure, that person is informed of:

- > the identity and function of each person conducting the interview
- > the process of conducting an investigation
- > the authority of the investigator under the PID Act to conduct an investigation
- > the protections provided to the person by section 57 of the PID Act
- > the person's duty:
 - if they are a public official—to use their best endeavours to assist the investigator in the conduct of an investigation under the PID Act (subject to the public official's privilege against incriminating themselves or exposing themselves to a penalty)
 - not to take or threaten to take reprisal action against the discloser
 - subject to the PID Act, not to disclose the identity of the person who made the disclosure.

Where the investigator conducts an interview as part of an investigation, at the end of the interview, the interviewee must be given an opportunity to make a final statement or comment or express a position. The investigator must include any final statement, comment or position in the record of the interview. The investigator must ensure that an audio or visual recording of the interview is not made without the interviewee's knowledge.

Where the investigator is aware of the discloser's identity and considers that it is necessary to reveal the discloser's identity to a witness, the investigator must consult with the discloser, where practicable, before proceeding.

Procedural fairness

Procedural fairness does not require that a person against whom allegations are made must be advised as soon as the disclosure is received or as soon as an investigation is commenced.

Procedural fairness may require that the discloser's identity be revealed to the person who is the subject of the disclosure.

Where the investigator, in preparing the report of their investigation, proposes to make a finding of fact, or express an opinion that is adverse to the discloser, to a public official who is the subject of the disclosure or to another person, the investigator or delegate must give the person who is the subject of that proposed finding or opinion a copy of the evidence that is relevant to that proposed finding or opinion and must give the person a reasonable opportunity to comment on it.

The requirement to provide a copy of relevant evidence will not apply where the investigator does not make substantive findings or express adverse opinions but instead simply recommends or decides that further investigation action should or should not be taken or will or will not be taken.

The investigator must ensure that a finding of fact in a report of an investigation under the PID Act is based on logically probative evidence.

The investigator must ensure that the evidence that is relied on in an investigation is relevant.

In broad terms, evidence is relevant to an investigation if it is of consequence to the matter under investigation and makes the existence of a fact more probable or less probable than it would be without the evidence.

Time limits

The investigator has 90 days from the date the disclosure was allocated in which to complete the investigation.

It is possible to seek one or more extensions of time from the Ombudsman.

A request to the Ombudsman for an extension of time must be made where an investigation has not been completed within 70 days of the date the disclosure was allocated.

The Ombudsman has indicated that an application for extension should include reasons why the investigation cannot be completed within the time limit, the views of the discloser on the question of an extension of time, and an outline of action taken to progress the investigation.

An investigation that is not completed within time does not become invalid.

Reports of investigations

In preparing a report of an investigation under the PID Act, the investigator must comply with the PID Act, the Ombudsman's Standard and these procedures.

A report of an investigation under the PID Act must set out:

- > the matters considered in the course of the investigation
- > the duration of the investigation
- > the investigator's findings (if any)
- > the action (if any) that has been, is being or is recommended to be taken
- > any claims made about, and any evidence of, detrimental action taken against the discloser, and the ACMA's response to those claims and that evidence.

Where, relevant, a report must:

- > identify whether there have been one or more instances of disclosable conduct
- > identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates
- > explain the steps taken to gather evidence
- > set out a summary of the evidence, and any findings and recommendations based on that evidence.

Where an investigator has completed a report of an investigation under the PID Act, and where they have been given the discloser's contact details, the investigator must, as soon as practicable, advise the discloser in writing by completing Form PID-7:

- > that the report has been completed
- > whether the report was completed within the time limit provided for by the PID Act.

The investigator must, within a reasonable time of preparing a report of an investigation under the PID Act, give a copy of the report to the discloser. However, the investigator 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
- > the inclusion of which would result in the copy being a document:

-
- that is exempt for the purposes of Part IV of the Freedom of Information Act 1982, or
 - having, or being required to have, a national security or other protective security classification, or
 - containing intelligence information.

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

Confidentiality

The investigation should be conducted in as confidential a manner as is possible. In particular, the identity of both the discloser and the person alleged to have engaged in the disclosable conduct should not be revealed except where this is reasonably necessary for the effective investigation of the disclosure (including because of the need to afford procedural fairness).

Any interviews conducted by an Authorised Officer or delegates (including investigators) should be conducted in private.

Any interviews with the discloser should be arranged so as to avoid the identification of the discloser by other staff of the agency.

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 in both. Access to these records must be restricted to the Authorised Officers, delegates (including investigators) or other employees in the ACMA who require access in order to perform some function under the PID Act or for the purposes of another law of the Commonwealth (for example, under the *Work Health and Safety Act 2011* or the *Public Service Act 1999*).

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' and hard copies stored in the appropriate storage container.

Any email messages sent by Authorised Officers or delegates that contain identifying information must be clearly marked 'to be read by named addressee only'.

Where a person ceases being an Authorised Officer in the ACMA (including because of resignation or movement to another agency), their PID records must be transferred to another Authorised Officer in the ACMA.

Monitoring and evaluation

Regular reporting to the Ombudsman is required to monitor PID Act activity.

Each Authorised Officer must advise the Executive Manager, People and Finance of any 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). Authorised Officers must also report any disclosures that have been allocated to the ACMA by another agency's Authorised Officer.

The Executive Manager, People and Finance will maintain a record of disclosures, along with details of any investigations undertaken and the outcomes of those investigations.

The Executive Manager, People and Finance will assist the Chair in providing information to the Ombudsman as required to meet statutory reporting requirements.

Appendix A: Disclosable conduct

Section 29 Public Interest Disclosure Act (PID Act) defines Disclosable Conduct

Subdivision B – Disclosable conduct

29 Meaning of *disclosable conduct*

- (1) **Disclosable conduct** is conduct of a kind mentioned in the following table that is conduct:
- a) engaged in by an agency; or
 - b) engaged in by a public official, in connection with his or her position as a public official; or
 - c) engaged in by a contracted service provider for a Commonwealth contract, in connection with entering into, or giving effect to, that contract:

Disclosable conduct

Item	Kinds of disclosable conduct
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1	Conduct that contravenes a law of the Commonwealth, a State or a Territory.
2	Conduct, in a foreign country, that contravenes a law that: <ul style="list-style-type: none">> is in force in the foreign country; and> is applicable to the agency, public official or contracted service provider; and> corresponds to a law in force in the Australian Capital Territory
3	Conduct that: <ul style="list-style-type: none">> perverts, or is engaged in for the purpose of perverting, or attempting to pervert, the course of justice; or> involves, or is engaged in for the purpose of, corruption of any other kind
4	Conduct that constitutes maladministration, including conduct that: <ul style="list-style-type: none">> is based, in whole or in part, on improper motives; or> is unreasonable, unjust or oppressive; or> is negligent
5	Conduct that is an abuse of public trust.
6	Conduct that is: <ul style="list-style-type: none">> fabrication, falsification, plagiarism, or deception, in relation to:<ul style="list-style-type: none">o proposing scientific research; oro carrying out scientific research; oro reporting the results of scientific research; or> misconduct relating to scientific analysis, scientific evaluation or the giving of scientific advice
7	Conduct that results in the wastage of: <ul style="list-style-type: none">> public money (within the meaning of the <i>Public Governance Performance and Accountability Act 2013</i>); or> public property (within the meaning of that Act); or> money of a prescribed authority; or> property of a prescribed authority.
8	Conduct that: <ul style="list-style-type: none">> unreasonably results in a danger to the health or safety of one or more persons; or> unreasonably results in, or increases, a risk of danger to the health or safety of one or more persons

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- | | |
|-------|--|
| 9 | Conduct that: <ul style="list-style-type: none">> results in a danger to the environment; or> results in, or increases, a risk of danger to the environment |
| <hr/> | |
| 10 | Conduct of a kind prescribed by the PID rules. |
-

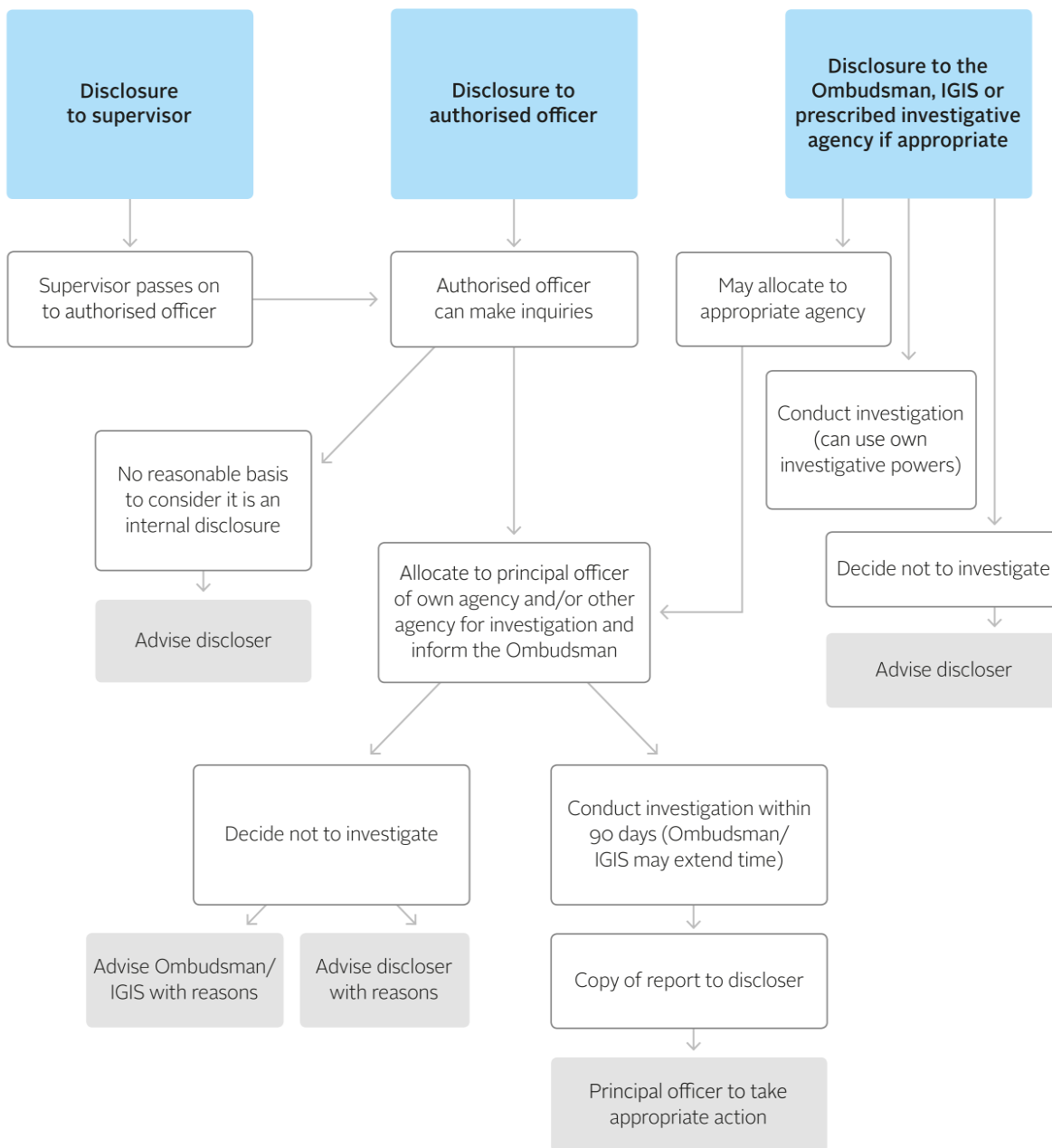
(2) Without limiting subsection (1), the following are also disclosable conduct:

- > conduct engaged in by a public official that involves, or is engaged in for the purpose of, the public official abusing his or her position as a public official
- > conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action against the public official.

(3) For the purposes of this section, it is immaterial:

- > whether conduct occurred before or after the commencement of this section; or
- > if an agency has engaged in conduct—whether the agency has ceased to exist after the conduct occurred; or
- > if a public official has engaged in conduct—whether the public official has ceased to be a public official after the conduct occurred; or
- > if a contracted service provider has engaged in conduct—whether the contracted service provider has ceased to be a contracted service provider after the conduct occurred.

Appendix B: PID Act internal disclosure process



Appendix C: Assessing risk of reprisal

Section 59 of the PID Act requires that agency procedures include assessing risks that reprisals may be taken against a person who makes a public interest disclosure. This involves assessing the specific behaviour and circumstances that may result in reprisals, and then putting in place appropriate strategies to prevent or contain them. Inappropriate workplace behaviour, including harassment, intimidation, undermining of authority, ostracism, humiliation, questioning of motives and heavier scrutiny of work, can greatly increase stress and can result in serious injury to someone who has made a disclosure. The risk assessment can include not only the risk of direct reprisal against the discloser, but also the risk of related workplace conflict or difficulties.

An accurate and objective risk assessment allows the ACMA to put suitable strategies in place to control the risks and defend itself against any allegations of having failed to protect a discloser.

When should a risk assessment be done?

The risk assessment should be completed as soon as possible after a disclosure is received. This provides the best chance of recognising any risk of reprisals or associated workplace conflict.

Who should be involved?

The risk assessment should be undertaken by whoever the disclosure was made to.

The best sources of information about potential risks are people who are involved in the particular workplace, especially the discloser and their supervisor or manager (provided that person is not involved in the alleged wrongdoing).

Asking the discloser why they are reporting wrongdoing and who they might fear a reprisal from can be helpful in:

- > assessing likely perceptions amongst staff as to why the discloser came forward and how colleagues may respond if the discloser's identity becomes known
- > managing the discloser's expectations about how other staff might perceive their disclosure
- > reducing the potential for future conflict between the discloser and management about whether effective support was provided
- > identifying the motives of staff allegedly involved in reprisals if a later investigation becomes necessary.

How should a risk assessment be conducted?

The following approach is consistent with the ACMA's framework for managing organisational risks.

- > Identifying—are reprisals, or related workplace conflict, problems in the workplace, or do they have the potential to be problems?
- > Assessing—what is the likelihood and consequence of reprisals or related workplace conflict?
- > Controlling—what strategies should be put in place to prevent or contain reprisals or related workplace conflict?
- > Monitoring and reviewing—have the strategies been implemented and were they effective?

Identifying risks

Each disclosure poses its own risk, however there are some risk factors that can alert authorised officers and managers to problems. The person doing the risk assessment should clearly define the individual factors affecting the particular discloser and the specific workplace when determining if there are factors that make it likely that reprisals or related workplace conflict will occur.

Indicators of a higher risk of reprisals or workplace conflict include:

Threats or past experience

- > Has a specific threat against the discloser been received?
- > Is there a history of conflict between the discloser and the subjects of the disclosure, management, supervisors or colleagues?
- > Is there a history of reprisals or other conflict in the workplace? Is it likely that the disclosure will exacerbate this?

Confidentiality unlikely to be maintained

- > Who knows that the disclosure has been made or was going to be made?
- > Has the discloser already raised the substance of the disclosure or revealed their identity in the workplace?
- > Who in the workplace knows the discloser's identity?
- > Is the discloser's immediate work unit small?
- > Are there circumstances, such as the discloser's stress level, that will make it difficult for them to not discuss the matter with people in their workplace?
- > Will the discloser become identified or suspected when the existence or substance of the disclosure is made known or investigated?
- > Can the disclosure be investigated while maintaining confidentiality?

Significant reported wrongdoing

- > Are there allegations about individuals in the disclosure?
- > Who are their close professional and social associates within the workplace?
- > Is there more than one alleged wrongdoer involved in the matter?
- > Is the reported wrongdoing serious?
- > Is or was the reported wrongdoing occurring frequently?
- > Is the disclosure particularly sensitive or embarrassing for any subjects of the disclosure, senior management, the agency or government?
- > Are these people likely to take reprisals—for example, because they have a lot to lose?
- > Do these people have the opportunity to take reprisals—for example, because they have power over the discloser?

Vulnerable discloser

- > Is or was the reported wrongdoing directed at the discloser?
- > Are there multiple subjects of the disclosure?
- > Is the disclosure about a more senior officer?
- > Is the discloser employed part-time or on a casual basis?
- > Is the discloser isolated—for example, geographically or because of shift work?
- > Are the allegations unlikely to be substantiated—for example, because there is a lack of evidence?
- > Is the disclosure being investigated by persons outside the ACMA?

Assessing risks

The person assessing the risk should consider:

- > the likelihood of reprisals, or related workplace conflict, occurring—this may be high if:

-
- there have already been threats
 - there is already conflict in the workplace
 - a combination of circumstances and risk factors indicate reprisals or related workplace conflict are likely
- > the potential consequences if they do occur—both to the discloser’s immediate and long term wellbeing, and the cost to the agency.

Controlling risks

The actions adopted to control the risk of reprisal are dependent upon a number of factors, as indicated above. Any decision should be made in consultation with the discloser.

If the risk is assessed as sufficiently high, the manager or authorised officer should prepare a plan to prevent and contain reprisals against the discloser, or related workplace conflict. If it has been determined that a discloser will require support, the agency should develop a strategy for providing an appropriate level of support, such as appointing a support person (a person responsible for checking on the wellbeing of the discloser regularly) or referring the discloser to the EAP.

If the discloser’s identity is likely to be known or become known in their workplace, the manager or authorised officer should adopt a proactive approach, for example, by raising the matter with staff, reiterating the agency’s commitment to encouraging and where appropriate investigating public interest disclosures, and reminding staff that taking or threatening a reprisal is a criminal offence.

Monitoring and reviewing risks

Problems in the workplace can arise at any point after a disclosure has been made, including during an investigation. The risk assessment should be monitored and reviewed as necessary, including by checking with the discloser to see if reprisals have been made or threatened.

Appendix D: forms

The following forms are used in PID Act matters, and are available on the [intranet](#).

Form	Title
PID-1	Notice to discloser—no allocation decision (s 44(3))
PID-2	Notice of allocation of disclosure (s 44(3))
PID-3	Notice of allocation (s 44(2))
PID-3A	Notice to discloser—investigation powers (s 9, <i>Public Interest Disclosure Standard 2013</i>)
PID-4	Notice to discloser—no investigation decision (s 50(2))
PID-4A	Notice to discloser—decision to cease investigation (s 50(2))
PID-5	Notice to discloser—investigation decision (s 50(1))
PID-6	Notice to Ombudsman—no investigation decision (s 50A)
PID-6A	Notice to Ombudsman—decision to cease investigation (s 50A)
PID-7	Notice of completion of report

[intranet/resources-and-tools/
policies-and-guidelines/all-policies-and-guidelines](#)