



Australian Government

Australian Fisheries Management Authority

# Procedures for Handling Public Interest Disclosures

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 Protecting our fishing future

## Contents

1.	Foreword.....	2
2.	Background to the Public Interest Disclosure Scheme.....	4
3.	What is a Public Interest Disclosure? .....	4
4.	What is Disclosable Conduct? .....	5
5.	What is not a Public Interest Disclosure? .....	7
6.	How to Make a Public Interest Disclosure .....	7
7.	Protection available to public officials who make a public interest disclosure .....	10
8.	Can a Public Interest Disclosure be withdrawn? .....	11
9.	Responsibilities of the Discloser after making a public interest disclosure.....	11
10.	The general process following the making of a Public Interest Disclosure.....	11
11.	Procedures for AFMA Supervisors and Managers Handling Public Interest Disclosures .....	13
12.	Procedures for AFMA Authorised Officers Handling Public Interest Disclosures.....	14
13.	Procedures for the AFMA Principal Officer and for Investigations of Public Interest Disclosures.....	14
	Annexure A - Further information and resources:.....	15

## 1. Foreword

At its heart, a public interest disclosure scheme is about removing barriers that prevent people who work in the Australian Fisheries Management Authority (AFMA), and the public sector generally, from speaking up about serious problems that impact on public administration. All AFMA staff, and all staff across the public sector, have a part to play in ensuring that problems are identified early, appropriate action is taken and that those who report wrongdoing are protected from reprisal.

Public interest disclosures are supported by AFMA due to the benefits such disclosures may bring to the agency. Public interest disclosures can help to:

- identify as early as possible conduct that needs correction
- identify any weak or flawed systems which may make AFMA vulnerable
- avoid inefficiency and financial loss
- reduce risks to the environment, or the health or safety of staff or the community.

AFMA is committed to the highest standards of ethical and accountable conduct and in this regard AFMA also is committed to supporting any of its staff, and other public officials, who wish to make a public interest disclosure.

Pursuant to s59 of the *Public Interest Disclosure Act 2013* (the **PID Act**) I hereby establish these procedures.

These procedures are supplemented by additional procedures established under s59 of the PID Act contained within the documents titled *Handbook for the use of AFMA Supervisors and Managers*, *Handbook – For the use of AFMA Authorised Officers* and the *Handbook – For the use the AFMA Principal Officer and for those delegated to perform a function, or exercise a power, of the Principal Officer under the Public Interest Disclosure Act 2013*

Dr James Findlay  
Chief Executive Officer

## 2. Background to the Public Interest Disclosure Scheme

- 2.1. The *Public Interest Disclosure Act 2013* (PID Act) is designed to:
- promote the integrity and accountability of the Commonwealth public sector; and
  - encourage and facilitate the making of public interest disclosures by public officials; and
  - ensure that public officials who make public interest disclosures are supported and are protected from adverse consequences relating to the disclosures; and
  - ensure that disclosures by public officials are properly investigated and dealt with.
- 2.2. Under the PID Act all public officials may make a Public Interest Disclosure and will be afforded protection under the PID Act in relation to the public interest disclosure.
- 2.3. A public official under the PID Act is broadly defined in s69 and s70 of the PID Act. Included in the definition of a *public official* under the PID Act will be current or former Australian Public Service employees, individuals who are contracted services providers under Commonwealth Government contracts and employees of contracted services providers for Commonwealth Government, Defence Force personnel and individuals who exercise powers, or perform functions, conferred on the individual by or under a law of the Commonwealth.

## 3. What is a Public Interest Disclosure?

- 3.1. A Public Interest Disclosure is a disclosure of information that is
- a disclosure concerning suspected or probable illegal conduct or other wrongdoing (referred to as “*disclosable conduct*”); or
  - a disclosure concerning a previous “internal disclosure” of the information that has not been adequately dealt with, and if wider disclosure satisfies public interest requirements; or

- a disclosure concerning a substantial and imminent danger to health or safety; or
- a disclosure to an Australian legal practitioner for purposes connected with the above matters.

3.2. In addition to the above, in relation to Public Interest Disclosures to AFMA, they must be made to an authorised internal recipient, or a supervisor of the discloser. Details of how an authorised internal recipient within AFMA may be contacted are available within Chapter 6 below under the heading *How to Make a Public Interest Disclosure*.

3.3. In addition to the above, in relation to Public Interest Disclosures to AFMA, they must be made to an authorised internal recipient, or a supervisor of the discloser. Details of how an authorised internal recipient within AFMA may be contacted are available within Chapter 6 below under the heading *How to Make a Public Interest Disclosure*.

3.4. The full definition of a public interest disclosure is found at section 26 of the PID Act. Even though the operative provisions of the PID Act did not commence until 15 January 2014, a public interest disclosure can be made in relation to matters occurring before the commencement of the PID Act.

#### 4. What is Disclosable Conduct?

4.1. Disclosable conduct has two elements. Firstly the conduct is to be engaged in by

- an agency,
- a public official, in connection with his or her position as a public official
- a contracted service provider under a Commonwealth contract, in connection with entering into, or giving effect to, that contract

4.2. Secondly, the conduct must be of a kind described in the table below:

<b>Disclosable conduct</b>	
<b>Item</b>	<b>Kinds of disclosable conduct</b>
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:

<b>Disclosable conduct</b>	
<b>Item</b>	<b>Kinds of disclosable conduct</b>
	(a) is in force in the foreign country; and (b) is applicable to the agency, public official or contracted service provider; and (c) corresponds to a law in force in the Australian Capital Territory.
3	Conduct that: (a) perverts, or is engaged in for the purpose of perverting, or attempting to pervert, the course of justice; or (b) involves, or is engaged in for the purpose of, corruption of any other kind.
4	Conduct that constitutes maladministration, including conduct that: (a) is based, in whole or in part, on improper motives; or (b) is unreasonable, unjust or oppressive; or (c) is negligent.
5	Conduct that is an abuse of public trust.
6	Conduct that is: (a) fabrication, falsification, plagiarism, or deception, in relation to: <ul style="list-style-type: none"> <li>• proposing scientific research; or</li> <li>• carrying out scientific research; or</li> <li>• reporting the results of scientific research; or</li> </ul> (b) misconduct relating to scientific analysis, scientific evaluation or the giving of scientific advice.
7	Conduct that results in the wastage of: (a) public money (within the meaning of the <i>Financial Management and Accountability Act 1997</i> ); or (b) public property (within the meaning of that Act); or (c) money of a prescribed authority; or (d) property of a prescribed authority.
8	Conduct that: (a) unreasonably results in a danger to the health or safety of one or more persons; or (b) unreasonably results in, or increases, a risk of danger to the health or safety of one or more persons.
9	Conduct that: (a) results in a danger to the environment; or (b) results in, or increases, a risk of danger to the environment.
10	Conduct of a kind prescribed by the PID rules.
11	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;
12	Conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action against the public official.

## **5. What is not a Public Interest Disclosure?**

- 5.1. As noted above a Public Interest Disclosure requires the presence of disclosable conduct. It is not disclosable conduct just because a person disagrees with:
- a government policy or proposed policy
  - action or proposed action by a minister, the Speaker of the House of Representatives or the President of the Senate
  - expenditure or proposed expenditure related to such policy or action.
- 5.2. Disclosable conduct also does not include judicial conduct, that is, the conduct of judicial officers, the judicial functions of court staff, tribunal staff or tribunal members, or any other conduct related to a court or tribunal unless it is of an administrative nature and does not relate to matters before the court or tribunal.
- 5.3. The conduct of members of Parliament is not covered by the PID Act. However, the departments of the Parliament and their employees are covered.
- 5.4. Disclosable conduct also does not include the proper performance of the functions and proper exercise of the powers of an intelligence agency or its officials.
- 5.5. Disclosable conduct by a public official must be conduct in connection with their position as a public official – in other words, conduct that is wholly private and has no bearing on their position as a public official is not disclosable conduct.

## **6. How to Make a Public Interest Disclosure**

- 6.1. AFMA employees should contact their AFMA Authorised Officer if they wish to make a public interest disclosure. This can be done in person, in writing (including email) or anonymously in writing (including email). An AFMA Authorised Officer is a person authorised by the CEO under the PID Act to receive public interest disclosures on behalf of AFMA.

- 6.2. A list of AFMA Authorised Officers is available to current AFMA employees on the AFMA Intranet through the Public Interest Disclosure Scheme Page accessible through the Human Resources Tab
- 6.3. Former AFMA employees, AFMA's contracted service providers, employees of AFMA's contracted service providers as well as other individuals who meet the definition of a *public official* under the PID Act may contact AFMA to make a public interest disclosure as follows:

- By emailing an AFMA Authorised Officer at [PID@afma.gov.au](mailto:PID@afma.gov.au).
- By post addressed as follows:

Private & Confidential

The AFMA Authorised Officer (Public Interest Disclosure)

Australian Fisheries Management Authority

Box 7051

Canberra Business Centre ACT 2610

- 6.4. The information disclosed should be sufficiently detailed so as to enable an AFMA Authorised Officer to make an assessment of whether it is a public interest disclosure. AFMA employees may make a public interest disclosure to their supervisor or manager, however, it is recommended that all AFMA employees directly approach an AFMA Authorised Officer in the manner described above at 6.1.
- 6.5. A public interest disclosure may even be made in circumstances where the person making it does not know it is a public interest disclosure. In these circumstances the AFMA Authorised Officers, or supervisor or manager, will advise the discloser that the information disclosed could be considered to be a public interest disclosure and that the processes under the PID Act will have to be followed.
- 6.6. A public interest disclosure may be made to the agency, or authorised officer of the agency, to which the discloser last belonged if the information relates

to that agency.

- 6.7. A public official should not investigate a matter themselves before making a public interest disclosure.
- 6.8. If a public official knowingly makes a false or misleading disclosure they will not have access to any of the protections under the PID Act.
- 6.9. A public official who is considering making a disclosure should be aware that making a disclosure under the PID Act does not entitle them to protection from the consequences of their own wrongdoing.
- 6.10. A person who wishes to make a public interest disclosure (the discloser) does not have to identify themselves and may remain anonymous. Remaining anonymous means the discloser does not identify themselves at any stage to anyone, including the authorised internal recipient (referred to within these procedures as the AFMA authorised officer) who receives the disclosure. If the disclosure comes from an email address from which the discloser's identity cannot be determined, and the discloser does not identify themselves in the email, it will be treated as an anonymous disclosure.
- 6.11. If the disclosure is not made anonymously the identity of the discloser remains protected from broader disclosure. A person who receives and investigates a public interest disclosure that is, a supervisor, an Authorised Officer, the Principal Officer (the Chief Executive Officer of AFMA) or a person delegated by the Principal Officer to exercise the powers or perform the functions of a Principal Officer must not reveal the discloser's identity during, or after, the public interest disclosure process without the discloser's consent.
- 6.12. A public interest disclosure may also be made directly to the Ombudsman. The Ombudsman may decide to investigate an internal disclosure that is made to an authorised officer in the Ombudsman's office or allocated (with consent) to the Ombudsman by another agency. If the Ombudsman decides to investigate an internal disclosure the Ombudsman will consider whether special reasons exist to conduct an investigation, or allocate the matter to the agency where the disclosable conduct is alleged to have occurred, or to a

prescribed investigative agency with appropriate jurisdiction. If the Ombudsman does decide to investigate a disclosure, the investigative powers under the *Ombudsman Act 1976* will generally be used rather than the powers under the PID Act.

- 6.13. The Ombudsman may also investigate under the *Ombudsman Act 1976* if a complaint is made about an agency's actions in handling a public interest disclosure.

## **7. Protection available to public officials who make a public interest disclosure**

- 7.1. Section 10 of the PID Act provides protection to public officials in relation to the disclosure of information that may be the subject of the public interest disclosure by providing that:

- *the individual is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the public interest disclosure; and*
- *no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the individual on the basis of the public interest disclosure.*

- 7.2. Under section 20 of the PID Act it will be an offence to identify the discloser as being the person making the public interest disclosure to others not directly involved in the public interest disclosure process. The maximum penalty for revealing the discloser's identity as the maker of the public interest disclosure is 6 months imprisonment or a \$5,100 fine or both.

- 7.3. It is an offence under the PID Act punishable by 2 years imprisonment a \$20,400 fine or both to take reprisal action against a discloser in relation to their public interest disclosure.

- 7.4. In addition to the protections against reprisals the PID Act also provides remedies to the discloser in the event that reprisals are taken against them. These remedies include compensation, injunctive relief in relation to the

reprisals taken, reinstatement, apology or a combination of these remedies.

- 7.5. AFMA must also ensure that a discloser is protected from any reprisals once they have made a public interest disclosure.

## **8. Can a Public Interest Disclosure be withdrawn?**

- 8.1. A discloser **cannot withdraw** a public interest disclosure. Once a public interest disclosure has been made, even in circumstances where the discloser did not know, or did not intend, it to be a public interest disclosure, it must be dealt with in accordance with the PID Act.

## **9. Responsibilities of the Discloser after making a public interest disclosure**

- 9.1. A person who makes a public interest disclosure should not discuss the details of the disclosure with anyone who does not need to know. Discussions with those people will not be covered by the protections in the PID Act.
- 9.2. A person who makes a public interest disclosure should be discreet about the fact that they have made a public interest disclosure, the information in their disclosure and any information that would identify someone they allege has acted wrongly.
- 9.3. A person who makes a public interest disclosure should also be prepared to provide further information to help the investigator, as this will often be required. Under the PID Act all AFMA staff must use their best endeavours to assist in any investigation.

## **10. The general process following the making of a Public Interest Disclosure**

- 10.1. A [PID flow chart](#) has been developed to provide a general overview of the PID process from receipt to finalisation.
- 10.2. If the public interest disclosure is made to an AFMA Authorised Officer, they are obliged to:

- Advise the discloser that the information provided may be considered a public interest disclosure under the PID Act and that they are obliged to pass the information on to the AFMA Principal Officer for investigation.
- Advise the discloser of the protections, under the PID Act, from reprisals in relation to the disclosure of the disclosable conduct;
- Advise the discloser that the PID Act has strict provisions around who is to have access to the information the discloser has provided and that such access will be limited to the AFMA Authorised Officer and the AFMA Principal Officer;
- Explain to the discloser what the PID Act requires in order for the disclosure to be an internal disclosure;
- Confirm with the discloser the nature of the information and obtain the discloser's consent to provide their details to the AFMA Principal Officer;
- Notify the discloser when their matter has been allocated to an AFMA Principal Officer, or Principal officer of another agency, for Investigation.

10.3. The AFMA Authorised Officer may contact the discloser for further information prior to making the decision to allocate the matter to an AFMA Principal Officer. If the information relates in whole or in part to another agency an AAO may allocate the public interest disclosure, or that part of the public interest disclosure relevant to the agency, to that other agency for investigation.

10.4. Once an AFMA Authorised Officer has allocated a public interest disclosure it must be investigated by an AFMA Principal Officer subject to certain exceptions contained within the PID Act.

10.5. The AFMA Principal Officer may contact the discloser for further information to assist in the investigation of the matter and the preparation of the Investigation Report.

10.6. The AFMA Principal Officer is required to complete the investigation of the

public interest disclosure and prepare a report within 90 days of the public interest disclosure being allocated to them by the AFMA Authorised Officer.

- 10.7. The AFMA Principal Officer must, as soon as reasonably practicable after the matter is allocated to them, inform the discloser that they are required to investigate the disclosure.
- 10.8. The AFMA Principal Officer must also inform the discloser of the estimated length of the investigation.
- 10.9. On completion of an Investigation of the public interest disclosure the AFMA Principal Officer must prepare a Report that sets out:
  - the matters considered in the course of the investigation; and
  - the duration of the investigation; and
  - the findings (if any); and
  - the action (if any) that has been, is being, or is recommended to be, taken; and
  - any claims made about, and any evidence of, detrimental action taken against the discloser, and the agency's response to those claims and that evidence.
- 10.10. There is a limited discretion available to the AFMA Principal Officer to not investigate a potential public interest disclosure. If this discretion is exercised the PID Act requires the discloser to be notified of the decision and the reasons for the decision.

## **11. Procedures for AFMA Supervisors and Managers Handling Public Interest Disclosures**

- 11.1. The detailed procedures that AFMA Supervisors and Managers are required to follow are as set out within the document titled *Handbook – For the use of AFMA Supervisors and Managers*. The handbook is accessible from the AFMA website.

## **12. Procedures for AFMA Authorised Officers Handling Public Interest Disclosures.**

12.1. The detailed procedures that AFMA Authorised Officers are required to follow are as set out within the document titled *Handbook – For the use of AFMA Authorised Officers*. The handbook is accessible from the AFMA website.

## **13. Procedures for the AFMA Principal Officer and for Investigations of Public Interest Disclosures.**

13.1. The detailed procedures that the AFMA Principal Officer, and those delegated to perform a function, or exercise a power, of the AFMA Principal Office is required to follow are as set out within the document titled *Handbook – For the use of the AFMA Principal Officers* and for those delegated to perform a function, or exercise a power, of the Principal Officer under the *Public Interest Disclosure Act 2013*. The handbook is accessible from the AFMA website.

### **Further information and resources:**

The following may be of further assistance, and provided further detail, to the AAO in the performance of their duties under the PID Act:

- The *Public Interest Disclosure Act 2013*
- The *Public Interest Disclosure Standards 2013*
- The *Public Interest Disclosure Regulations*
- Guidance material published by the Commonwealth Ombudsman and available on its website including:
  - the Agency Guide to the Public Interest Disclosure Act 2013
  - Speaking up about wrongdoing – A guide to making a disclosure under the Public Interest Disclosure Act
- Information sheets published by the Commonwealth Ombudsman and available on its website including:
  - The Public Interest Disclosure Act 2013– what’s it all about?
  - How to make a Public Interest Disclosure
  - Responsibilities of Principal officers of Commonwealth agencies.