



Australian Government



Public Interest Disclosure Procedures

The CEFC is a corporate Commonwealth entity established by the Australian Government under the *Clean Energy Finance Corporation Act 2012* (CEFC Act).

The CEFC is committed to the highest standards of ethical behaviour. CEFC encourages the reporting of wrongdoing under the *Public Interest Disclosure Act 2013* (PID Act). The CEFC will act, in accordance with the PID Act, when disclosures are received to protect disclosers from Reprisals or threats of Reprisals as a result of making a disclosure.

Contents

1. Introduction	2
2. Definitions	3
3. Making a Public Interest Disclosure to the CEFC	5
4. How does the CEFC handle a Public Interest Disclosure?	9
5. Confidentiality	19
6. Support for Disclosers	19
7. Support for a person against whom a disclosure has been made	19
8. Record keeping	20
9. Other disclosures	20
10. Procedure Responsibility and Reviews	21
11. Further guidance	21

1. Introduction

This document sets out the Procedures of the Clean Energy Finance Corporation (CEFC) for facilitating and dealing with Public Interest Disclosures for the purposes of section 59(3) of the *Public Interest Disclosure Act 2013* (Cth) (PID Act).

The PID Act facilitates the disclosure and investigation of wrongdoing in the Commonwealth public sector and corporate Commonwealth entities. The PID Act also provides protections for Public Officials who make disclosures, for persons who provide assistance in disclosure investigations for persons who provide assistance (within the meaning of subsection 12A(2) of the PID Act) in relation to a public interest disclosure and for persons who are the subject of a public interest disclosure..

The CEFC is committed to the highest standards of ethical and accountable behaviour. The CEFC encourages the reporting of wrongdoing under the PID Act. The CEFC will act, in accordance with its obligations under the PID Act, when disclosures are received to protect disclosers from Reprisals or threats of Reprisals as a result of making a disclosure and for witnesses who provide assistance in disclosure investigations.

These procedures have been developed to assist the CEFC to fulfil its obligations under the PID Act and set out the way in which the organisation receives, investigates and manages Public Interest Disclosures, including:

- (a) Who can make a Public Interest Disclosure
- (b) What can be reported
- (c) How a Public Interest Disclosure can be made
- (d) How and when a Public Interest Disclosure will be investigated, and
- (e) How Public Interest Disclosure regime interacts with the National Anti Corruption Commission.

The CEFC will review these procedures regularly to ensure their continued effectiveness.

2. Definitions

Authorised Officer means:

- (i) The Chief Executive Officer (CEO) of the CEFC as the Principal Officer of the CEFC for the purposes of the PID Act; or
- (ii) A person appointed as an authorised officer by the Principal Officer under the PID Act.

The CEO has appointed Head of Governance, Risk and Compliance Andrew Jauncey and Head of Legal Matthew Hislop as Authorised Officers. Changes to CEFC Authorised Officers (including the appointment of new Authorised Officers) after the date of these Procedures will be notified to CEFC personnel from time to time.

Disclosable conduct, is defined in section 29 of the PID Act, and includes

- (a) Conduct engaged in by an agency, a Public Official (in connection with their position) or a contracted Commonwealth service provider (in connection with a Commonwealth contract) that:
 - Contravenes a Commonwealth, State or Territory law
 - in a foreign country, contravenes a foreign law that applies to the agency, official or service provider
 - Is corrupt
 - Perverts the course of justice
 - Results in wastage of public funds or property
 - Is an abuse of public trust
 - involves fabrication, falsification, plagiarism or deception relating to scientific research, or other misconduct in relation to scientific research, analysis or advice
 - Unreasonably endangers health and safety or endangers the environment
 - Is maladministration, including conduct that is unjust, oppressive or negligent
 - Is of a kind prescribed by the PID Rule¹
- (b) Conduct that is engaged in by a Public Official that involves abuse of the Public Official's position or, if proved, would give rise to disciplinary conduct against the official resulting in the termination of the Public Official's engagement or appointment (s 29(2)).

Conduct is not *Disclosable Conduct* if it relates only to

- personal work-related conduct (s 29A) engaged in by one Public Official in relation to another Public Official in relation to or in the course of the second Official's employment or appointment, or exercise of functions or powers, that has personal implications for the second Official. This includes interpersonal conflict such as bullying or harassment
- government policy, action or expenditure with which a person disagrees
- conduct relating to courts tribunals and the Parliament (s 32)
- the performance of the functions and exercise of an intelligence agency or its officials (s 33)

Discloser means a current or former Public Official who discloses information.

¹ As at February 2026 there is no additional kind of conduct prescribed by the PID Rule.

Disclosure means information disclosed by a Discloser.

Principal Officer means the CEO or his/her delegate as appointed from time to time.

Public Official is detailed in section 69 to 70 of the PID Act. It is a broad term which, in summary, includes any person who is or was employed or appointed by the Australian Government, staff of Commonwealth companies, Commonwealth authorities and statutory agencies, the Parliament Service, statutory officeholders and service providers under a Contract to the Commonwealth, and, of relevance for the CEFC, includes all current and former (to the extent of their CEFC activities only) CEFC employees, directors and contractors.

Public Interest Disclosure means a disclosure:

- (a) Made by a person who is or was a Public Official
- (b) To an Authorised Officer of the CEFC who is an authorised internal recipient for that disclosure under section 34 of the PID Act or a supervisor of the Discloser
- (c) Of information which tends to show, or the Discloser believes on reasonable grounds that the information tends to show, one or more instances of Disclosable Conduct.

Reprisal is defined in section 13 of the PID Act and occurs if someone causes, by an act or omission, any detriment to another person because they believe or suspect that person, or anyone else, may have made or intends to make a *Public Interest Disclosure*. Detriment is any disadvantage to a person, e.g. dismissal, injury in their employment, discrimination between them and other staff or alteration of their position to their disadvantage. It does not include legitimate actions related to the work performance of the individual or administrative action taken to protect that person from *Reprisals*.

3. Making a Public Interest Disclosure to the CEFC

What are Public Interest Disclosures?

It is important to note that not all disclosures of information made to the CEFC will be a "public interest disclosure" for the purposes of the PID Act (a PID). A disclosure will only be a PID to which these procedures apply if it meets the following requirements:

- it is made by a Public Official or a person who has been a Public Official (or who is deemed to be a Public Official);²
- the information tends to show, or the Discloser believes on reasonable grounds that the information tends to show, one or more instances of "disclosable conduct" as defined by the PID Act;³ and
- the disclosure is made to an appropriate person.⁴

An overview of these key requirements, prepared by the Commonwealth Ombudsman, is at **Schedule 1**.

Who can make a Public Interest Disclosure

A Public Official or a person who has been a Public Official (or who is deemed to be a Public Official) can make a Public Interest Disclosure. This includes a current or former CEFC employee or contracted service providers: see section 69 of the PID Act.

What can be reported

Information that tends to show, or the Discloser believes on reasonable grounds that the information tends to show, one or more instances of "disclosable conduct" as defined by the PID Act. What does and does not constitute *Disclosable Conduct* is defined in sections 29-33 of the PID Act.

Who to contact

If you wish to make a *Public Interest Disclosure* to the CEFC or require further information about how the CEFC operates under the *Public Interest Disclosure* scheme, please contact an Authorised Officer. As at October 2025, CEFC's PID Authorised Officers are:

Chief Executive Officer	Principal Officer	02 8039 0810
Andrew Jauncey, Head of Governance, Risk and Compliance	Authorised Officer	02 8039 0882
Matthew Hislop, Head of Legal	Authorised Officer	07 3188 1651

² This includes a current or former CEFC employee or contracted service providers: see section 69 of the [PID Act](#).

³ What does and does not constitutes disclosable conduct is defined in sections 29-33 of the [PID Act](#).

⁴ Generally, to constitute a PID, the disclosure must first be made to an "authorised internal recipient" or a supervisor of the discloser as defined in sections 34 and 8 (respectively) of the PID Act. The PID Act sets out strict requirements that must be met for disclosures to persons outside an agency to be afforded the protections contained in the PID Act: see section 26 of the [PID Act](#) and the information set out at Schedule 1

A Public Interest Disclosure may be made verbally or in writing (by letter or email) directly to an Authorised Officer.

Alternatively, you can send an email to pid@cefc.com.au which is a secure, dedicated email address set up to receive *Disclosures*. Only *Authorised Officers* appointed by the CEO have access to this email account.

Disclosure to a supervisor

You may also choose to make a disclosure directly to your supervisor. If your supervisor has reasonable grounds to believe that the information concerns, or could concern, Disclosable Conduct, they are required to pass the matter on to an Authorised Officer as soon as reasonably practicable for appropriate investigation. The supervisor must:

- inform the Discloser that the disclosure could be treated as an “internal disclosure” for the purposes of the PID Act;
- explain to the discloser the procedures under the PID Act for such a disclosure to be:
 - given to an Authorised Officer;
 - allocated to the Discloser’s agency or another agency; and
 - investigated by the Principal Officer of CEFC
- advise the individual about the circumstances (if any) in which a Public Interest Disclosure must be referred to an agency, or other person or body, under another law of the Commonwealth; and
- explain to the Discloser the civil and criminal protections this Act provides to protect Disclosers, and those providing assistance in relation to such disclosures, from Reprisals; and
- give the information to an Authorised Officer of CEFC as soon as reasonably practicable.

If your *Disclosure* is made orally to an Authorised Officer direct or by your supervisor, a record will be made by the Authorised Officer of what was said to them.

Further detailed advice on how to make a Public Interest Disclosure can be found on the Commonwealth Ombudsman website at www.pid.ombudsman.gov.au.

You will be able to find general information on this website as well as information on how to make an external or emergency *Disclosure* or a *Disclosure* directly to the Ombudsman.

Can you remain anonymous?

The Authorised Officer and the Principal Officer will take reasonable steps to protect the identity of a Public Official who has made a PID from the time of the making of the disclosure.

The CEFC will accept and act on anonymous *Disclosures* where practicable.

You are not required to identify yourself at any stage to anyone, including the Authorised Officer who receives the Disclosure. If the Disclosure comes from an email address from which your identity cannot be determined and you do not identify yourself in the email, it will be treated as an anonymous Disclosure. In order to gain the protections in the PID Act, you must be or have been a Public Official and an Authorised Officer will attempt to contact you to establish your status and determine whether you are prepared to provide a means of contact during the investigation of the matter.

Where your identity is known to the Authorised Officer, they will not provide your name and contact details to the Principal Officer (for the purposes of investigating the Disclosure) without seeking your consent. You are not required to provide consent. However, before making an anonymous

Disclosure, or advising the Authorised Officer that you do not want your name and/or contact details to be disclosed to the Principal Officer, you might like to consider that:

- The PID Act requires the CEFC to keep your identity confidential subject to limited exceptions and, if your identity needs to be disclosed or is likely to become apparent, the Authorised Officer will discuss this with you
- It will be difficult for the CEFC to ensure your protection from Reprisal if it does not know your identity
- If an Authorised Officer is satisfied on reasonable grounds that there is no reasonable basis on which the Disclosure could be considered to be an internal disclosure, the Authorised Officer is not required to allocate the Disclosure for investigation. Accordingly, if the Authorised Officer cannot contact you to seek further information about your Disclosure, the matter may not proceed
- Once a Disclosure has been allocated, the Principal Officer may decide not to investigate it if they consider it impracticable to do so because your name and contact details have not been disclosed
- If you maintain anonymity you will not be able to be updated on the progress and outcome of the investigation.

What supporting information should you provide?

No particular supporting information is required in making a Disclosure. The onus is not on a Discloser to prove the underlying wrongdoing the subject of the Public Interest Disclosure, you only need to put the CEFC on notice that you honestly believe, on reasonable grounds, that there has been wrongdoing. However, including as much of the below information as possible in your Disclosure will assist the CEFC in determining how to proceed:

- (a) Your name and contact details
- (b) The nature of the wrongdoing
- (c) Who you think committed the wrongdoing
- (d) When and where the wrongdoing occurred
- (e) Relevant events surrounding the wrongdoing
- (f) If you did anything in response to the wrongdoing
- (g) Others who know about the wrongdoing and have allowed it to continue
- (h) Whether you believe your information is a Public Interest Disclosure under the PID Act
- (i) Whether you are concerned about possible Reprisal as a result of making a Disclosure.

You should be clear and factual, and avoid speculation, personal attacks and emotive language. The Authorised Officer may ask you for any supporting correspondence or other documents, such as file notes or a diary of events, and the names of any people who witnessed the conduct or who may be able to verify the events set out in your Disclosure. You should not investigate a matter yourself before making the Public Interest Disclosure because this may hinder a future investigation.

Even if the information you provide turns out to be incorrect or is unable to be substantiated, your Disclosure is protected by the PID Act, provided that the disclosure meets the requirements of the PID Act.

What about your own wrongdoing?

Making a Public Interest Disclosure does not protect you from the consequences of your own wrongdoing. The handling of such matters will be assessed on a case-by-case basis.

In addition, if you make a Disclosure that is intentionally false or misleading, or which you know contravenes a designated publication restriction without reasonable excuse, you will not be entitled to the protections conferred by the PID Act.

What are your obligations in making a Public Interest Disclosure?

You should not discuss the details of your Public Interest Disclosure with anyone other than your supervisor or the Authorised Officer, because discussions with other people will not be covered by the protections in the PID Act.

If you are uncertain of your rights and responsibilities in relation to a proposed disclosure and require independent legal advice, you may seek independent legal advice in relation to making a disclosure. However, in that process, you must not disclose “intelligence information”⁵ or “sensitive law enforcement information”⁶.

Interaction with the National Anti-Corruption Commission

The *National Anti-Corruption Commission Act 2022 (Cth)* (NACC Act) establishes the National Anti-Corruption Commission. Information about the NACC can be found on the NACC’s website.

At all stages of dealing with and handling a disclosure, staff members of the CEFC who are exercising powers or functions under Division 1 or 2 of Part 3 of the PID Act (including the Principal Officer and Authorised Officers and their delegates) must be aware of and consider their mandatory obligation under section 35 of the NACC Act.

Section 35 of the NACC Act provides that Authorised Officers must refer a corruption issue to the NACC as soon as reasonably practicable upon becoming aware of a corruption issue in the course of performing functions or duties under the PID Act, that:

- concerns the conduct of a person who is or was a staff member of the CEFC that they suspect raise serious or systemic corrupt conduct;
- the Authorised Officer suspects could involve corrupt conduct that is serious or systemic.

An Authorised Officer is not required to refer a corruption issue if they believe on reasonable grounds that NACC is already aware of the issue.

If an Authorised Officer becomes aware of such a corruption issue that could involve serious or systemic corrupt conduct as a result of an internal disclosure

⁵ This includes information that has originated with, or has been received from, an intelligence agency including the Department of Defence, reveal certain matters connected with an intelligence agency including the Department of Defence or connected with disclosures made by public officials of foreign governments or reveal the identify of persons employed by such agencies or governments. Refer section 41 of the PID Act for the full definition.

⁶ Information the disclosure of which is reasonably likely to prejudice Australia’s law enforcement interests. Refer section 41 of the PID Act for the full definition.

they must, as soon as reasonably practicable, notify the discloser of the referral of the issue to the NACC under section 35 of the NACC Act.

Where a referral is made to the NACC, the CEFC should continue to deal with/ handle a disclosure, unless a stop action direction has been issued under section 43(1) of the NACC Act (section 39 of the NACC Act).

The NACC Act contains particular obligations with respect to stop action directions.

4. How does the CEFC handle a Public Interest Disclosure?

Step 1 – Initial consideration of disclosure and allocation

When an Authorised Officer receives a disclosure of information (from a Discloser, or the Discloser's supervisor), he or she will consider the information disclosed and must determine whether the Authorised Officer is satisfied on reasonable grounds that:

- there is no reasonable basis on which the disclosure could be considered to be an internal disclosure; or
- the conduct disclosed would be more appropriately investigated under another law or power (noting this ground cannot be satisfied only because the conduct disclosed raises a corruption issue).

If so satisfied, the Authorised Officer must allocate a disclosure as set out below.

The Authorised Officer must use their best endeavours to make a decision about the allocation of a disclosure within 14 days after the date on which the disclosure is made to or given to an Authorised Officer.

Before making a decision, the Authorised Officer must consider whether they have satisfied their obligations under section 60 of the PID Act (which relate to providing information to Disclosers).

An Authorised Officer may also consider the re-allocation of a disclosure to another agency after making an original decision allocating the disclosure.

On receipt of a Disclosure, where practicable, the Authorised Officer will advise the Discloser about the Public Interest Disclosure process at the CEFC and the support available to a person who makes a Public Interest Disclosure (see also "Support for Disclosers" of these Procedures below). The Discloser may be asked further questions so the Authorised Officer clearly understands the nature of the Disclosure they are making.

If the Authorised Officer decides to allocate a disclosure:

He or she will allocate the Disclosure to a Principal Officer of one or more agencies for further handling and investigation in accordance with the process outlined at Step 2.

If the Authorised Officer decides not to allocate a Disclosure

The Authorised Officer must, as soon as reasonably practicable after deciding not to allocate the Disclosure:

- if reasonably practicable, give written notice to the *Discloser* of:
 - the decision not to allocate the disclosure and the reasons for the decision;

- if the Authorised Officer is satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power, the details of:
 - the other law or power;
 - the agency or other person or body to which the conduct has been, or is to be referred;
 - the actions taken or proposed to be taken to refer the conduct disclosed, or to facilitate its referral, for investigation; and
- otherwise, any other course of action that might be available to the Discloser under another law or power give written notice to the Ombudsman (or the Inspector-General of Intelligence and Security (IGIS) if the conduct disclosed relates to an intelligence agency or ACIC or the AFP in relation to their intelligence functions) of:
 - the decision not to allocate the disclosure and the reasons for the decision;
 - whether the Authorised Officer has taken, or proposes to take, action to refer the conduct disclosed, or to facilitate its referral, for investigation under another law or power, and if so, details of:
 - the other law or power;
 - the agency or other person or body to which the conduct has been, or is to be referred;
 - the steps taken or proposed to be taken to refer the conduct disclosed, or to facilitate its referral, for investigation.
 - if the Authorised Officer is satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power, take reasonable steps as soon as reasonably practicable to refer the conduct disclosed, or facilitate its referral, for investigation under the other law or power.

If a NACC stop action direction prevents the allocation of the disclosure

If a stop action direction under the NACC Act prevents the Authorised Officer from allocating some or all of a disclosure, the Authorised Officer must give written notice to the Ombudsman or IGIS (if the disclosure concerns conduct relating to an intelligence agency, or the IGIS, or ACIC or AFP in relation to their intelligence functions), of:

- the information that was disclosed to the Authorised Officer;
- the conduct disclosed; and
- if the Discloser's name and contact details are known to the Authorised Officer, and the Discloser consents to the Principal Officer and the Ombudsman/IGIS being informed – the Discloser's name and contact details;
- the stop action direction under the NACC Act that prevents allocation of some or all of the disclosure.

The Authorised Officer must also notify the Discloser of the referral to the NACC as soon as reasonably practicable.

The Authorised Officer should also consider whether it is appropriate to notify a Discloser that a stop action direction has prevented the allocation of the disclosure. The Authorised Officer must carefully consider the terms of any stop action direction and consult with the Principal Officer (who may also consult with the NACC) prior to notifying a Discloser.

Step 2 – Allocating a Disclosure

The Authorised Officer will use his or her best endeavours to decide the allocation within 14 days after the Disclosure is made.

If the Authorised Officer decides to allocate the disclosure, the Authorised Officer must allocate the disclosure to one or more agencies.

In deciding the agency or agencies to which a Disclosure will be allocated, the Authorised Officer must have regard to:

- the principle that an agency should not handle a disclosure unless some or all of the conduct disclosed relates to the agency (unless the agency is the Ombudsman, the Inspector-General of Intelligence and Security (IGIS) or an investigative agency prescribed by the Public Interest Disclosure Rules)
- other matters (if any) as the Authorised Officer considers relevant, including:
 - whether another agency in the same portfolio as the recipient agency would be better placed to handle the disclosure; and
 - any recommendation from the Ombudsman or IGIS about the allocation of the disclosure following a review under section 55 of the PID Act.

The Authorised Officer must not allocate a Disclosure to another agency unless an authorised officer of that agency has consented to the allocation.

Step 3 - Confirm whether Discloser consents to being identified

Before notifying an agency or the Ombudsman/IGIS of the allocation of a disclosure, the Authorised Officer must ask the Discloser (if the Discloser's identity is known) whether they consent to their name and contact details being disclosed to the agency or the Ombudsman/IGIS.

Step 4 - Giving notice of allocation decision

When the Authorised Officer allocates the handling of a disclosure to an agency (including to the CEFC), the Authorised Officer must, as soon as reasonably practicable, give written notice to:

- the Principal Officer of that agency;
- the Ombudsman (unless the Authorised Officer allocated the disclosure to the Ombudsman, the IGIS, an intelligence agency or the ACIC or AFP in relation to their intelligence functions); and
- the IGIS (if the Authorised Officer allocated the disclosure to an intelligence agency, the ACIC or AFP in relation to their intelligence functions).

The written notice must set out the following matters:

- the allocation to the agency;
- the information that was disclosed to the Authorised Officer;
- the conduct disclosed; and
- if the Discloser's name and contact details are known to the Authorised Officer, and the Discloser consents to the Principal Officer and the Ombudsman/IGIS being informed – the Discloser's name and contact details.

Informing the Discloser

If reasonably practicable, the Authorised Officer must also give a copy of the written notice described above to the Discloser as soon as reasonably practicable after the allocation.

Step 5 - Making a record of the allocation decision

When an Authorised Officer allocates the handling of a Disclosure to one or more agencies, he or she must keep an appropriate written record of the:

- (a) Decision (including the name of the agency or agencies to which the Disclosure is to be allocated).
- (b) Reasons for the decision.
- (c) Consent of the authorised officer of the agency or agencies who are being allocated the Disclosure.
- (d) Any consent provided by the Discloser.

In addition, the Authorised Officer must keep appropriate records of:

- whether the Discloser was informed of the allocation decision and, if not, why not;

- (a) if notice was given to the Discloser: Day and time the Discloser was notified.
- (b) means by which the Discloser was notified.
- (c) content of the notification.

These records should be kept confidential.

Step 6 - Reprisal Risk Assessment

A: Conduct a risk assessment

As soon as possible after a Disclosure is received, the Authorised Officer will complete a formal risk assessment as to the risk that Reprisals will be taken in relation to the Disclosure.

Reprisal occurs if someone causes, by act or omission, any detriment to another person because they believe or suspect that person, or any other person, has made, may have made, proposes to make, or could make a Public Interest Disclosure. Reprisal also includes a threat to take Reprisal action.

Authorised Officers should assess the risk of reprisal for the Discloser, and any other person (including witnesses and staff) who might be suspected to have made, or could make, disclosures.

Schedule 2 sets out considerations that will be taken into account when the Authorised Officer undertakes the risk assessment.

B: Develop a risk mitigation strategy is necessary

Based on the risk assessment, the Authorised Officer will determine what strategy, if any, should be put in place to mitigate the risk of Reprisals or related workplace conflict. This strategy may include some or all of the support measures set out in section 6 "Support for Disclosers" below. In appropriate circumstances, this could include raising the matter with employees by reminding staff that taking or threatening to take a Reprisal is a criminal offence.

C: Monitor and review risks

The Authorised Officer will monitor and review the risk of Reprisals throughout the investigation process and may contact the Discloser to discuss their experience.

Step 7 - Investigation

The Principal Officer is responsible for undertaking investigations into allegations set out in a Public Interest Disclosure. The Principal Officer has delegated those powers and functions, and those delegates may seek assistance from independent and skilled investigators.

A: Providing initial information to Discloser

Where reasonably practicable, the Principal Officer will, within 14 days of allocation, give the Discloser information about the Principal Officer's discretion to decide the following matters in relation to a disclosure made by the discloser:

- (a) not to investigate the Disclosure;
- (b) not to investigate the Disclosure further;
- (c) to investigate the Disclosure under a separate investigative power; or
- (d) decide to investigate the disclosure under another law or power,

unless the principal officer is reasonably satisfied that the initial information has already been given to the discloser by an authorised officer in a notice under section 44 of the PID Act.

B: Considering whether to investigate the Disclosure

If allocation of a PID to the CEFC occurs, the Principal Officer must investigate the disclosure, unless there is a basis under the PID Act to decide not to investigate the disclosure or the Principal Officer cannot investigate the disclosure (or investigate the disclosure further) because of a stop action direction under the NACC Act.

The Principal Officer may decide not to investigate a disclosure (or not to investigate a disclosure further) if:

- the Discloser is not and has not been a Public Official;
- the information does not, to any extent, concern serious *Disclosable Conduct*;
- the disclosure is frivolous or vexatious;
- the information is the same or substantially the same as information previously disclosed under the PID Act and a decision had been previously made under section 48 not to investigate or further investigate the disclosure;
- the information is the same or substantially the same as information previously disclosed under the PID Act and the earlier disclosure has been, or is being, investigated as a disclosure investigation;
- the conduct disclosed (or substantially the same conduct) is being investigated under another law or power and the Principal Officer is satisfied, on reasonable grounds, that it would be inappropriate to conduct a PID investigation at the same time;
- the conduct disclosed (or substantially the same conduct) has been investigated under another law or power and the Principal Officer is satisfied, on reasonable grounds, that there are no further matters considering the conduct that warrant investigation;
- the Principal Officer is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or

power (unless this view is reached because the conduct disclosed raises a corruption issue);

- the Principal Officer has been informed by the Discloser, an Authorised Officer of the agency, or a Principal Officer or Authorised Officer of another agency, that the *Discloser* does not wish for the investigation of the disclosure to be pursued and the Principal Officer is satisfied, on reasonable grounds, that there are no matters concerning the disclosure that warrant investigation.

(a) It is impracticable to investigate the Disclosure because:

- of the age of the information
- the Discloser's name and contact details have not been disclosed
- the Discloser has failed, or is unable, to give the person who is or will be investigating the information or assistance they have requested.

C: Notifying the Discloser and the Ombudsman

If the *Disclosure* will not be investigated

If the Principal Officer decides not to investigate (or further investigate) a disclosure under the PID Act, they will (as soon as reasonably practicable):

- if reasonably practicable, give written notice to the Discloser that the Principal Officer has decided not to investigate (or further investigate) the disclosure, identifying
 - the reasons for the decision not to investigate;
 - if the Principal Officer decides that the disclosure would be more appropriately investigated under another law or power, details of:
 - the other law or power;
 - the agency or other person or body to which the conduct has been or will be referred;
 - the steps taken or proposed to be taken for the conduct to be referred or to facilitate referral.
- The Principal Officer may delete from the reasons any reasons that would cause the document:
 - to be exempt for the purposes of Part IV of the Freedom of Information Act 1982
 - to have or be required to have, a national security or other protective security classification, or
 - to contain intelligence information
- give written notice to the Ombudsman of the decision not to investigate (or further investigate) and the reasons for that decision. If the Principal Officer decides that the disclosure would be more appropriately investigated under another law or power, the Principal Officer must provide the Ombudsman with details of:
 - the other law or power;
 - the agency or other person or body to which the conduct has been or will be referred;
 - the steps taken or proposed to be taken for the conduct to be referred or to facilitate referral.

If the Principal Officer decides that the disclosure would be more appropriately investigated under another law or power, the Principal Officer

must, as soon as reasonably practicable, take reasonable steps to refer the conduct disclosed, or facilitate its referral, for investigation under the other law or power.

If the Disclosure will be investigated

If the Principal Officer decides to investigate the Disclosure, he or she will, as soon as reasonably practicable, inform the Discloser:

- that he or she is required to investigate the Disclosure
- the estimated length of the investigation.

A written record of any decision will be kept by the *Principal Officer*.

If the disclosure cannot be investigated because of a stop action direction

If the disclosure cannot be investigated (or cannot be investigated further) because of a stop action direction under the NACC Act, the Principal Officer must give written notice of the stop action direction to the Discloser and the Ombudsman as soon as reasonably practicable.

The Principal Officer must, as soon as reasonably practicable, inform the Discloser if the Principal Officer investigates, or further investigates, a disclosure that is no longer the subject of a stop action direction under the NACC Act.

D: Conducting the investigation

The Principal Officer may investigate the matter personally, or may refer the matter to an investigator to assist in determining whether there are one or more instances of Disclosable Conduct.

The Principal Officer must investigate whether there are one or more instances of Disclosable Conduct. Instances of Disclosable Conduct may relate to information that is disclosed or information obtained in the course of the investigation, unless the Principal Officer is satisfied on reasonable grounds that such information is tangential or remote to the disclosure.

General principles

The following general principles will apply to the conduct of investigations:

- maintaining the confidentiality of the identity of the Discloser will be paramount when conducting the investigation;
- the investigation process will be consistent with the principles of procedural fairness;
- the investigation will be carried out with as little formality as a proper consideration of the matter allows;
- documentation of actions, conversations and decisions relating to a disclosure should be kept;
- a decision whether evidence is sufficient to prove a fact will be determined on the balance of probabilities; and
- a person who is the subject of the investigation will be provided with an opportunity to respond and provide evidence in relation to the allegations.

Aside from compliance with these principles, the Principal Officer is free to conduct the investigation as they see fit, subject to any other applicable requirements in the PID Act and PID Standards Determination 2025. The method of the investigation may vary depending on the alleged conduct being investigated.

Where applicable, the Ombudsman is required to provide notifications of investigations (and not just opinions) under s8 of the *Ombudsman Act* to the

Chief Executive Officer as Principal Officer through his email address (being ian.learmonth@cefc.com.au) and where determined appropriate by the Ombudsman, copied to pid@cefc.com.au.

Obtaining information

During the investigation, the Principal Officer investigator may, for the purposes of the investigation, obtain information from such persons and make such inquiries as they see fit.

During the investigation, an interviewee will be informed of:

- the identity and function of each individual conducting the interview;
- the process of conducting an investigation;
- the authority of the Principal Officer/delegate/investigator under the PID Act and supporting delegations to conduct the investigation; and
- the protections provided under Part 2 of the PID Act.

The Principal Officer will ensure:

- an audio or visual recording of the interview is only made with the interviewee's knowledge;
- the interviewee is given an opportunity to make a final statement or comment or express a position when the interview ends; and
- any final statement, comment or position by the interviewee is included in the record of the interview.

In conducting the investigation, the Principal Officer may adopt findings set out in reports of other investigations or inquiries under other laws or powers, or investigations under the PID Act.

Deciding not to investigate further

The Principal Officer may decide during the course of an investigation not to investigate further on one or more of the grounds in section 48 of the PID Act (see considerations summarised in Step 2 'Considering whether to investigate the Disclosure' above). If the Principal Officer makes such a decision, they must provide the relevant notifications set out in Step 3 'Notifying the Discloser and the Ombudsman'.

Referral of information to police and others

If, during the course of the investigation, the person conducting the investigation suspects on reasonable grounds that information disclosed or obtained in the course of the investigation is evidence of the commission of an offence, they may disclose the information to a member of an Australian police force responsible for the investigation of the offence.

If the information relates to an offence that is punishable by a period of imprisonment for at least two years, the Principal Officer must disclose the information to a member of an Australian police force responsible for the investigation of the offence unless the investigator suspects on reasonable grounds that the relevant information raises a corruption issue and the corruption issue has already been referred to the NACC or IGIS (as relevant) or that agency is already aware of the issue.

Step 8 – Preparation of an investigation report

Once the Principal Officer has completed the investigation, he or she will prepare a report of the investigation.

The Principal Officer must complete the investigation report within 90 days after:

- the initial allocation or reallocation of the disclosure to CEFC;
- in the case of a re-investigation, the day on which the Principal Officer decides to reinvestigate the disclosure; or
- to the extent that a stop action direction under the NACC Act prevented the investigation, the day on which the Principal Officer becomes aware that a stop direction under the NACC Act which prevented the investigation no longer applies.

The Ombudsman may extend, or further extend, the 90 day period by such period as the Ombudsman considers appropriate on application by the Principal Officer.

If the Ombudsman grants an extension, the Principal Officer will, as soon as reasonably practicable, inform the Discloser of the progress of the investigation.

The final report into a *Public Interest Disclosure* will set out:

- (a) the matters considered in the course of the investigation;
- (b) the duration of the investigation;
- (c) the Principal Officer's findings (if any);
- (d) any claims of Reprisals being taken against the Discloser or other persons that relate to the matters considered in the course of the investigation (including any related evidence);
- (e) the agency's response to any claims or evidence relating to the Reprisal;
- (f) to the extent relevant:
 - the steps taken to gather evidence;
 - a summary of the evidence relied on in the investigation, and any findings and recommendations made based on that evidence and an explanation as to how any findings and recommendations are supported by the evidence;
 - any regulations, rules, administrative requirements or similar matters to which the Disclosable Conduct relates;
 - whether there have been one or more instances of Disclosable Conduct.

Step 9 – Reporting to the Discloser and the Ombudsman

Reporting to the Discloser

The Principal Officer must provide written notice of the completion of the investigation and a copy of the report to the Discloser (if reasonably practicable) and the Ombudsman. The notice and report must be provided within a reasonable time after preparing the report.

However, the Principal Officer 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
- would be exempt for the purposes of Part IV of the Freedom of Information Act 1982;
- would require a national security or other protective security clearance;
- contains intelligence information; or
- contravenes a designated publication restriction as defined in the PID Act.

However, the Principal Officer may delete from the copy of the report given to the Ombudsman any material:

- that is likely to enable the identification of the discloser or another person; or
- the inclusion of which would contravene a designated publication restriction.

Reporting to the Ombudsman

The Principal Officer will ensure that records are kept so that the Principal Officer can comply with their obligation to provide the following information to the Ombudsman as required:

- the number of Public Interest Disclosures received by Authorised Officers of the agency during the period covered by the report;
- the kinds of Disclosable Conduct to which those Public Interest Disclosures related;
- the number of disclosures allocated to the agency during the period covered by the report;
- the number of disclosure investigations that the Principal Officer conducted during the period covered by the report;
- the time taken to conduct those investigations;
- the actions that the Principal Officer has taken during the period covered by the report in response to recommendations in reports relating to those disclosure investigations;
- any other information requested by the Ombudsman.

Step 10 – CEFC actions

At the end of the investigation the *Principal Officer* or delegate will take appropriate action in response to the findings and recommendations set out in the investigation report. The actions may include:

- commencing a disciplinary process
- referral of the matter to the police or another body that can take further action
- mediation or conciliation of a workplace conflict
- an internal audit or other review of an issue or the operations of a particular unit
- implementation of or the amending of policies, procedures or practices
- conduct training and awareness sessions for staff.

5. Confidentiality

The Authorised Officer and the Principal Officer will take reasonable steps to protect the identity of a Public Official who has made a PID from the time of the making of the disclosure.

To protect a Discloser's identity, the Authorised Officer and Principal Officer will limit the number of people who are aware of the Discloser's identity or information that will tend to identify them and remind each person who has that identifying information that they should keep it confidential and that unauthorised disclosure may be a criminal offence.

It is an offence for a Public Official to disclose information that is likely to enable the identification of a person as someone who has made a Public Interest Disclosure (other than in accordance with the PID Act). The PID Act sets out a number of exemptions at section 20(3).

Identifying information about a Discloser will not be disclosed to a court or tribunal except where necessary to give effect to the PID Act.

The PID Act contemplates that the Principal Officer may provide information and documents in relation to a disclosure to another agency within CEFC's portfolio if the conduct relates to that agency or the disclosure is allocated to that agency.

6. Support for Disclosers

The Authorised Officer and Principal Officer will take reasonable steps to support public officials who belong to CEFC who have made a Public Interest Disclosure and to protect them from detriment or threats of detriment relating to the Public Interest Disclosure.

This may include taking one or more of the following actions:

- appointing a support person to assist the Discloser or witness, who is responsible for checking on the wellbeing of the Discloser or witness regularly
- informing the Discloser of the progress of the investigation
- advising the Discloser of the availability of the Employee Assistance Program
- where there are any concerns about the health and wellbeing of the Discloser or any witness, liaising with officers responsible for work health and safety in the CEFC
- transferring the Discloser or witness to a different area within the workplace (with the consent of the Discloser or witness).

7. Support for a person against whom a disclosure has been made

The Authorised Officer and Principal Officer will also take steps to support any employee who is the subject of a PID.

This may include taking one or more of the following actions as appropriate:

- advising the employee of their rights and obligations under the PID Act and about these investigation procedures, including the employee's rights to procedural fairness;
- informing the employee of the progress of the investigation;
- advising the employee of the availability of the Employee Assistance Program;
- ensuring that the identity of the employee is kept confidential as far as reasonably practicable;

- where there are any concerns about the health and wellbeing of the employee, liaising with officers responsible for work health and safety in CEFC; and
- transferring the employee to a different area within the workplace.

8. Record keeping

The Authorised Officers must securely keep appropriate records of how and when a Public Interest Disclosure was made. Each Disclosure should be given a unique reference number. Details of the risk assessment of Reprisal, allocation, the investigation, notification to the Discloser and others will also be kept.

In addition, the CEFC is required to report the following information to the Ombudsman in a de-identified manner on an annual basis the:

- Numbers and types of Public Interest Disclosures received;
- Number of investigations undertaken during the relevant financial year;
- Kinds of Disclosable Conduct to which they related;
- Number of Disclosure investigations that were handled directly by the CEO as Principal Officer;
- Outcomes (including action taken in response to investigation report findings and recommendations); and
- Details of any support provided to Disclosers and allegations of Reprisal.

An appropriate written record must be kept by the Authorised Officer of:

- the decision
- the reasons for the decision;
- if the authorised officer is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power — details of the following:
 - the other law or power;
 - the action taken or proposed to be taken to refer, or to facilitate the referral of, the conduct for investigation under the other law or power;
- if the authorised officer decides not to refer the conduct for investigation under the other law or power — any advice provided to the discloser about any courses of action that might be available to the discloser under the another law or power;
- whether notice was given to the Discloser, and if not, why not;
- if notice was given, a copy of the notice given to the Discloser must be retained, which includes confirmation of the day and time the notice was given and the means by which the notice was given.

If a stop action direction prevents the allocation of a Disclosure to an agency, a written record must be kept of the details of the direction, including when the direction was made and when the stop action direction no longer applies. The written record must also indicate whether the Principal Officer of the relevant agency considers that it is reasonably practicable or appropriate for the Discloser to be given a copy of the notice.

9. Other disclosures

As a matter of best practice, the CEFC will deal with certain disclosures that are not Public Interest Disclosures in a way that is consistent with the obligations of a "regulated entity" with respect to a disclosure made under section 1317AA(2) of the *Corporations Act 2001*. The disclosures that this applies to are following types of disclosures:

- (a) disclosures made about a "disclosable matter" by relatives or dependents of CEFC employees, or directors or secretaries of its related body corporates
- (b) internal disclosures made about conduct that may represent a danger to the financial system
- (c) internal disclosures made about a "disclosable matter" to either/or:
 - an "officer" or "senior manager" who is not an Authorised Officer or a supervisor of the Discloser
 - an auditor of the CEFC or a related body corporate
 - an actuary of the CEFC or a related body corporate.

In particular, the paragraphs of these Procedures in relation to confidentiality and support for Disclosers will apply to disclosures of these types.

10. Procedures Responsibility and Reviews

The Head of Governance, Risk and Compliance is responsible for overseeing implementation of these Procedures as well as ensuring these Procedures are periodically reviewed so that they remain effective and appropriate for CEFC business activities.

At a minimum these Procedures are reviewed every two years.

11. Further guidance

All questions regarding these Procedures should be directed to the CEFC Head of Governance, Risk and Compliance.

About the CEFC

The CEFC is Australia's specialist climate investor, helping cut emissions in the race towards net zero by 2050. We invest in the latest technologies to generate, store, manage and transmit clean energy. Our discounted asset finance programs help put more Australians on the path to sustainability, in their homes and on the road. CEFC capital is also backing the net zero transformation of our natural capital, infrastructure, property and resources sectors, while providing critical capital for the emerging climate tech businesses of tomorrow. With access to more than \$33 billion from the Australian Government, the CEFC invests with commercial rigour and is governed by an independent board.

Schedule 1– Relevant extracts from the Commonwealth Ombudsman's agency guide to the Public Interest Disclosure Act 2013 – version 3, published July 2023

Who can make a public interest disclosure?

A person must be a current or former 'public official', as defined in section 69-70 of the PID Act, to make a public interest disclosure (s 26(1)(a)).

In general, a person can make a disclosure if they belong, or previously belonged, to one of the agencies covered by the PID Act. This includes Commonwealth public servants, members of the Defence Force, appointees of the Australian Federal Police, Parliamentary Service employees, directors or staff of Commonwealth companies, statutory office holders or any other person who exercises powers under a Commonwealth law.

Individuals and organisations that provide goods or services under a Commonwealth contract (defined in s 30(3)) and their officers or employees, are also public officials for the purposes of the PID Act. This includes subcontractors who are responsible for providing goods or services, either directly or indirectly, to an agency covered by the PID Act for the purposes of a Commonwealth contract (s 30(2)).

The PID Act specifically excludes some individuals from being public officials under the Act. Public official does not include a Member of Parliament, staff employed under the Members of Parliament (Staff) Act 1984 (MOP(S) Act employees), a judicial officer, a member of a Royal Commission or grant recipients.

A public official whose ordinary functions include sharing information about wrongdoing in the agency with their supervisor or an authorised officer (for example, those working in internal fraud control, case management, or protective security) will not meet the requirements for making an internal disclosure if the disclosure is made in the course of performing the discloser's ordinary functions as a public official (s 26(1) – see 4.1.3.1 of this guide). If a public official in such a role intends to make a public interest disclosure, they will need to clearly express that intent when making the disclosure.

Deeming individuals to be public officials

An authorised officer may deem an individual to be a public official if they reasonably believe the individual has information about wrongdoing and proposes to make a disclosure (s 70). Authorised officers are the Principal Officer of an agency (i.e., the agency head) and officers that the Principal Officer appoints as authorised officers under the PID Act (s 36). It is not necessary for the disclosing individual to request that they be deemed a public official, but the authorised officer must provide the individual with a written notice of the determination.

An authorised officer might consider it appropriate to deem an individual to be a public official if the individual is not a public official, but nevertheless has 'inside information' about the agency's wrongdoing. Examples might include:

- a current or former volunteer with an agency
- a member of an advisory body to a Commonwealth agency (where the member's terms of engagement do not meet the definition of a public official)
- an employee of an organisation that receives grant funding from the Australian Government, or
- state and territory department officials who work alongside Commonwealth officials.

An authorised officer may also decide to deem a person to be a public official if they do not know, or cannot be certain, whether the person is a public official. For example, the person may be unwilling to provide identifying information for fear of reprisal. The relevant test is that the person was

not a public official at the time the information they are disclosing was obtained (s 70(1)(b)). If the authorised officer is otherwise satisfied that the person is or has been a public official, then deeming is not required.

An authorised officer's power to deem a person to be a public official operates only for the purposes of allowing that person to make a disclosure under the PID Act (s 70). An authorised officer cannot extend the reach of the PID Act by deeming a person to be a public official for the purposes of allowing a second person to make a disclosure about that first person's conduct. Additionally, a judicial officer, member of parliament, member of a Royal Commission or a person employed under the Members of Parliament (Staff) Act 1984 cannot be deemed a public official for the purposes of making a disclosure (s 70(3A)).

What can be disclosed?

A public official can disclose information that they believe, on reasonable grounds, tends to show 'disclosable conduct'.

Disclosable conduct covered by the PID Act has to be conduct on the part of one of the following:

- an agency
- a public official in connection with their position
- a contracted Commonwealth service provider in connection with entering into or giving effect to the contract

The kinds of conduct that a disclosure can be made about are listed in the table to section 29(1) of the PID Act. They are conduct that:

- contravenes a Commonwealth, State or Territory law
- in a foreign country, contravenes a foreign law that applies to the agency, official or service provider
- perverts the course of justice
- is corrupt
- constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent
- is an abuse of public trust
- involves fabrication, falsification, plagiarism or deception relating to scientific research, or other misconduct in relation to scientific research, analysis or advice
- results in wastage of public money or public property
- unreasonably endangers health and safety
- endangers the environment
- is prescribed by the PID rules (s 29(1)).

Disclosable conduct also includes conduct by a public official that:

- involves or is engaged in for the purposes of abusing their position as a public official; or
- could give reasonable grounds for disciplinary action resulting in the termination of the public official's engagement or appointment (s 29(2)).

What is not disclosable conduct?

Personal work-related conduct

The PID Act provides that personal work-related conduct (s 29A) is not disclosable conduct. Personal work-related conduct is conduct engaged in by one public official in relation to another public official that has personal implications for the second official. The conduct must have occurred in relation to the second official's engagement or appointment and/or in the course of their employment or exercise of their functions and powers as a public official. It includes, but is not limited to, conduct relating to:

- interpersonal conflict, such as bullying or harassment
- changing a person's duties
- disciplinary action
- adverse decisions about promotion or temporary acting arrangements
- terms and conditions of employment or engagement
- suspension or termination
- actions that could be reviewed under s 33 of the Public Service Act 1999, or comparable review processes relating to terms or conditions of engagement or appointment

Excluding personal work-related conduct from the scope of disclosable conduct recognises that personal work-related conduct is often dealt with more effectively under other frameworks, as distinct from the PID Act, which is focused on significant integrity wrongdoing.

Personal work-related conduct will be disclosable conduct where the personal work-related conduct:

- amounts to reprisal action
- is of such a significant nature that it would undermine public confidence in an agency, or
- has other significant implications for an agency.

Personal work-related conduct that could be considered to be of a significant nature or have such significant implications for an agency as to affect public confidence in the agency, would depend on the circumstances of each case.

Disclosures of solely personal work-related conduct will not, unless an exception applies, constitute an internal disclosure for the purposes of the PID Act. Disclosures of information that tends to show both personal work-related conduct and disclosable conduct will still need to be allocated as an internal disclosure under the PID Act.

Conduct relating to courts, tribunals and the Parliament

The PID Act has limited application to courts and tribunals. The following aspects of court and tribunal operations are excluded from the categories of disclosable conduct in the PID Act (s 32):

- the conduct of judicial officers (defined in s 32(1))
- the judicial functions of court staff, tribunal staff or tribunal members
- the conduct of tribunal members or tribunal staff when exercising a power of the tribunal
- any other conduct related to a court or tribunal unless it is of an administrative nature and does not relate to the management or hearing of matters before the court or tribunal.

The conduct of members of parliament or of MOP(S) Act employees is not covered by the PID Act (because they are not 'public officials' as defined in s 69). However, the departments of the Parliament and their employees are covered.

Disagreement with government policy or actions

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 (s 31).

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 (s 32).

The conduct of members of Parliament is not covered by the PID Act. However, the departments of the Parliament and their employees are covered.

Intelligence agencies

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 (s 33).

Making a disclosure

In order to gain the protections available under the PID Act, a disclosure must be made to an authorised recipient (s 26). The PID Act focuses on the reporting and investigating of wrongdoing within government (internal disclosures) but allows for reporting outside government in specified circumstances.

Making an internal disclosure

Under the PID Act, a public official can make an internal disclosure to their current supervisor or an authorised officer in:

- their current agency, or
- the agency to which they previously belonged, or
- the agency to which the disclosure relates.

Authorised officers are the Principal Officer of an agency (i.e. the agency head), and officers that the Principal Officer appoints as authorised officers under the PID Act (s 36). If a public official has information about suspected wrongdoing in an agency other than the one in which they work, they can choose to make their disclosure directly to an authorised officer in that other agency. However, if the conduct disclosed relates to an intelligence agency, the public official must disclose it to an authorised officer in that agency (or the IGIS) and not to their own agency.

A public official can also make a disclosure to authorised officers of the Commonwealth Ombudsman, if they believe on reasonable grounds that it would be appropriate for the Ombudsman to investigate (ss 26(1), 34). This could include, but would not be limited to, circumstances where the discloser believes that the agency will not take appropriate action to deal with the conduct disclosed.

If the matter involves an intelligence agency or agency with intelligence functions (see s 8 definition), there are 2 options. Either the public official can make a disclosure to an authorised officer in the intelligence agency or, if they believe on reasonable grounds that it would be appropriate for the IGIS to investigate, the public official may make a disclosure to an authorised officer of the IGIS (see www.igis.gov.au).

The PID Act also allows for agencies with special investigative powers to be prescribed under PID rules. If the matter concerns their functions and powers, a disclosure may be made to those special investigative agencies. However, at the time of publication there are no prescribed investigative agencies.

Making a disclosure internally gives the agency the chance to investigate the matter and remove any danger or correct any wrong practices as quickly as possible.

Making other disclosures

A public official must use one of the proper avenues to gain the protections available under the PID Act. This means that a public official will not receive these protections if they give the information to someone outside government, for example a journalist or union representative, unless the conditions for an external or emergency disclosure are met. If these conditions are not met, they may be in breach of their duty to maintain appropriate confidentiality in relation to official information they have gained in the course of their work, or be subject to other civil, criminal or disciplinary action.

External disclosures

A public official who has already made an internal disclosure under the PID Act may in some circumstances subsequently make a disclosure to any person (except a foreign public official), if (s 26(1) item 2):

- the final report of the internal PID investigation has not been prepared within 90 days of allocation, or the extended investigation period approved by the Ombudsman or the IGIS (this condition does not apply to Ombudsman/IGIS investigations under their respective legislation)
- the PID investigation has been completed and the discloser believes on reasonable grounds that the investigation was inadequate
- an investigation has been completed (whether the investigation was conducted under the PID Act or under other legislation) and the discloser believes on reasonable grounds that the response to the investigation was inadequate.

Additional restrictions apply to external disclosures (s 26):

- the public official must not disclose more information than is reasonably necessary to identify the wrongdoing
- all of the externally disclosed information must have been the subject of at least part of a prior internal disclosure
- on balance, making that external disclosure must not be contrary to the public interest.

The external disclosure must not include intelligence information, including sensitive law enforcement information, and none of the information disclosed can concern the conduct of an intelligence agency. Further, the definition of 'disclosable conduct' excludes conduct that an intelligence agency, or one of its officials, engages in as part of the proper exercise of the intelligence agency's functions.

If the agency decides not to allocate or investigate the official's disclosure (i.e., by making a decision under s 43 or s 48 of the PID Act, including a decision not to allocate or investigate because the conduct would be better investigated under another law or power), this will not meet the criteria

for an official to make an external disclosure. The official may complain to the Ombudsman about the agency's decision not to allocate or investigate their disclosure. If the disclosure relates to one of the intelligence agencies or the intelligence functions of the ACIC or AFP, the official may complain to the IGIS.

Emergency disclosure

If a public official believes on reasonable grounds that the information they have involves a substantial and imminent danger to the health or safety of one or more people or to the environment, they may make an emergency disclosure to any person except a foreign public official (s 26(1) item 3), provided they meet certain requirements:

- the extent of the information they disclose must be only what is necessary to alert the recipient of the substantial and imminent danger.
- if they have not previously made an internal disclosure about the matter, or if they have done so and the investigation is not yet completed, there must be exceptional circumstances justifying their decision to make an external disclosure. This might include, for example, if the investigation was taking too long to complete having regard to the risk to a person's health and safety.

An emergency disclosure must not include intelligence information, including sensitive law enforcement information.

Legal practitioner disclosure

An official may make an emergency or external disclosure to a legal practitioner (noting these disclosures may be made to any person other than a foreign public official in the circumstances discussed above).

There is also a specific category of public interest disclosure under the PID Act – 'a legal practitioner disclosure' - which allows a public official to disclose information to an Australian legal practitioner for the purposes of seeking legal advice or professional assistance in relation to the official's actual or proposed disclosure elsewhere (i.e., an internal disclosure, an emergency disclosure or an external disclosure).

An Australian legal practitioner is an Australian lawyer admitted to the legal profession by a Supreme Court of an Australian State or Territory and who holds a practising certificate under a law of an Australian State or Territory (s 8 PID Act). In order to make a 'legal practitioner disclosure', the disclosure by the public official to the lawyer must be made for the purpose of obtaining legal advice or professional assistance from the lawyer in relation to a disclosure that the discloser has made or proposes to make.

For a 'legal practitioner disclosure', the official must not disclose intelligence information including sensitive law enforcement information (s 26(1) item 4).

Disclosures to the NACC

A public official may make a public interest disclosure directly to the NACC. The NACC Commissioner has discretion to investigate a corruption issue raised through a disclosure if they are of the opinion that the issue could involve serious or systemic corrupt conduct. If the disclosure is made to the NACC and the Commissioner decides not to investigate it, the Commissioner may refer it back to the relevant agency for consideration or investigation.

The NACC Act and the PID Act offer different protections to disclosers. The NACC Act protections are available to any person who provides information or evidence related to a corruption issue to the Commission. Importantly, a public official will be able to access protections under both schemes where the information or evidence disclosed to the Commission also constitutes disclosable conduct under the PID Act.

Schedule 2 Risk Assessment Considerations⁷

Consideration		Likelihood assessment criteria (A – E)	Consequence assessment criteria (1 – 5)	Risk level (extreme, high, medium, low)	Control effectiveness rating (1-5)	Risk category
Threats or past experience	Has a specific threat against the Discloser been received?					
	Is there a history of conflict between the Discloser and the subject 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 the identity in the workplace?					

⁷ Adapted from the Commonwealth Ombudsman Agency Guide to the Public Interest Disclosure Act 2013

Consideration		Likelihood assessment criteria (A – E)	Consequence assessment criteria (1 – 5)	Risk level (extreme, high, medium, low)	Control effectiveness rating (1-5)	Risk category
	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 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 CEFC or government?					

Consideration		Likelihood assessment criteria (A – E)	Consequence assessment criteria (1 – 5)	Risk level (extreme, high, medium, low)	Control effectiveness rating (1-5)	Risk category
	Do these people have the intent 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 staff member?					
	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 outside the CEFC?					
