

**DEPARTMENT OF COMMUNICATIONS  
PROCEDURES FOR FACILITATING AND DEALING  
WITH PUBLIC INTEREST DISCLOSURES**

I, DREW CLARKE, Secretary of the Department of Communications (the Department), under subsection 59(1) of the *Public Interest Disclosure Act 2013* (the Act), issue the Department of Communications Procedures for Facilitating and Dealing with Public Interest Disclosures as follows.

The Procedures commence on 15 January 2014.

Dated: 3 January 2014



Drew Clarke

## **1. The purpose of the Procedures**

1. The purpose of these Procedures is to set out the basic requirements that must be complied with for facilitating and dealing with a public interest disclosure for the purposes of section 26 of the Act (a 'disclosure'), where that disclosure relates to the Department.

*Note: Public interest disclosure has the meaning given by Subdivision A of Division 2 of Part 2 of the Act.*

## **2. Making a disclosure within the Department**

1. Within the Department, a person who is, or has been, a public official (the discloser) may make a disclosure to a person appointed by the Secretary as an authorised officer of the Department (an 'authorised officer'), or the Secretary in the capacity of an authorised officer, or to the discloser's supervisor.

*Note: A public official is defined in section 69 of the Act. Authorised officers of the Department are identified in the Instrument of Appointment of Authorised Officers.*

2. Where a public official discloses information to their supervisor, and the supervisor has reasonable grounds to believe the information concerns, or could concern, disclosable conduct, the supervisor must provide the information to an authorised officer (unless the supervisor is an authorised officer).

*Note: Section 34 of the Act identifies other persons outside the Department who will, in specified circumstances, be able to receive disclosures relating to the Department, including the Ombudsman.*

3. A disclosure may be made in writing or orally, and without the discloser asserting the disclosure is made for the purposes of the Act.
4. A disclosure may also be made anonymously. However, remaining anonymous may limit the scope of an investigation of the disclosure, and preclude the ability to notify the discloser of developments in, or the outcome of, an investigation.

### 3. Assessing a disclosure for allocation

1. Where a disclosure is made to an authorised officer, the authorised officer will assess whether there is a reasonable basis on which the disclosure could be considered an internal disclosure for the purposes of the Act.

*Note: The requirements for an internal disclosure are set out in item 1 of the table in subsection 26(1) of the Act.*

2. Except where the authorised officer is satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered an internal disclosure, the authorised officer will allocate the handling of the disclosure to one or more agencies (which may be, or include, the Department).

*Note: In determining the appropriate agency for allocation, the authorised officer must have regard to the matters set out in subsection 43(3) of the Act.*

3. The authorised officer must use best endeavours to make a decision regarding the allocation of an internal disclosure within 14 days after the disclosure is made to the authorised officer.
4. When the authorised officer allocates the handling of an internal disclosure to one or more agencies, the authorised officer must notify in writing the Principal Officer of each agency of:
  - a. the allocation to the agency;
  - b. the information that was disclosed;
  - c. the suspected disclosable conduct; and
  - d. the discloser's name and contact details if known to the authorised officer and if known provided the discloser consents to their name and contact details being provided to the Principal Officer.
5. The authorised officer must keep a written record of:
  - a. the allocation decision (including the name of each agency to which the disclosure is to be allocated);
  - b. the reasons for the allocation decision;
  - c. the consent provided by the agency to which the allocation is made.
6. Once a decision has been made regarding the allocation of an internal disclosure to an agency, where contact is reasonably practicable the discloser will be informed in writing as soon as reasonably practicable:
  - a. of the allocation of the internal disclosure; or
  - b. that the internal disclosure will not be allocated to an agency (in which case the discloser will be provided reasons for the decision and details of any other courses of action that might be available to the discloser under other laws of the Commonwealth).

7. The authorised officer is to keep a written record of whether the discloser was informed of the allocation decision, and if so, of:

- a. the day and time the discloser was notified;
  - b. the means by which the discloser was notified; and
  - c. the content of the notification.
8. Where the internal disclosure has been allocated to the Department, the discloser will also be informed (where reasonably practicable to do so, within 14 days after allocation) about the Secretary's (or delegate's) powers under the Act to decide not to investigate the disclosure, or (where an investigation has started) not to investigate the disclosure further.

*Note: In certain circumstances as set out in subsection 48(1) of the Act, the Secretary (or delegate) will not be required to investigate, or investigate further (where an investigation has started), the disclosure.*

#### **4. Investigating an internal disclosure**

1. Where an internal disclosure is allocated to the Department, unless the Secretary (or delegate) decides in accordance with the Act not to investigate the disclosure, or (if an investigation has already started) not to investigate the disclosure further, the Secretary (or delegate) will undertake an investigation into whether there are one or more instances of disclosable conduct.
2. Where contact is reasonably practicable, the Secretary (or delegate) will inform the discloser in writing that either:
  - a. the disclosure will be investigated, and the estimated length of the investigation; or
  - b. the disclosure will not be investigated - in which case the discloser will be provided with reasons for the decision and details of any other courses of action that might be available to the discloser under other laws of the Commonwealth.

*Note: In certain circumstances as specified in subsection 50(3) of the Act, some material may be deleted from the notification of reasons provided to the discloser.*

3. The Secretary (or delegate) must consider, having regard to all the circumstances, whether to provide persons who are the subject of an internal disclosure an opportunity to be heard in relation to the internal disclosure.
4. In accordance with the requirements of the *Public Interest Disclosure Standard 2013* (the Standard), and subject to restrictions imposed by any other law of the Commonwealth, the Secretary (or delegate) must ensure that, if a person is interviewed as part of the investigation of a disclosure:
  - a. the interviewee is informed of:
    - i. the identity and function of each individual conducting the interview;
    - ii. the process of conducting an investigation;
    - iii. the authority of the Secretary (or delegate) to conduct the investigation;

- iv. the protections provided by section 57 of the Act (relating to protection from criminal and civil liability in relation to information given, documents given, or answers to questions provided, as part of a disclosure investigation)
  - b. an audio or visual recording of the interview is not made without the interviewee's knowledge;
  - c. when the interview ends, the interviewee is given an opportunity to make a final statement or comment or express a position and such statement, comment or position is included in the record of interview.
5. In accordance with the Standard, an internal disclosure is to be investigated on the basis that a decision as to whether evidence is sufficient to prove a fact must be determined on the balance of probabilities.

*Note: Summarised broadly, a fact is taken to be proved on the balance of probabilities if the Secretary (or delegate) is satisfied it is more likely than not that the fact is true.*

6. In accordance with the Standard, in relation to evidence gathered as part of an investigation:
- a. a finding of fact is to be based on logically-probative evidence;
  - b. evidence relied on in the investigation is to be relevant.

*Note: Summarised broadly:*

- logically-probative evidence is material that tends logically to prove the existence or non-existence of a fact;
- evidence is relevant if it is of consequence to a matter under investigation, and it makes the existence of a fact more probable or less probable than it would be without the evidence.

7. Public officials must use best endeavours to assist the Secretary (or delegate) in the conduct of an investigation.
8. Subject to any time extensions, an investigation must be completed within 90 days after the disclosure was allocated to the Department. The investigation will be complete when the Secretary (or delegate) has prepared a report of the investigation.

*Note: The timeframe for completion of an investigation may be extended, or further extended, (up to 90 days) by the Ombudsman, either at the initiative of the Ombudsman or upon application by the Secretary (or delegate) or the discloser, in accordance with section 52 of the Act.*

9. Where the timeframe for completion of an investigation is extended, the discloser will be notified of the extension by the Ombudsman, and the Secretary (or delegate) will inform the discloser of the progress of the investigation as soon as reasonably practicable thereafter (provided contact is reasonably practicable).

## **5. Report of investigation into internal disclosure**

1. Upon completion of the investigation, the Secretary (or delegate) will prepare a report of the investigation in accordance with the requirements of the Act and the Standard, which will include details of:
  - the matters considered in the course of the investigation;
  - the duration of the investigation;
  - the steps taken to gather evidence, and a summary of the evidence;
  - any findings (including findings as to whether there have been one or more instances of disclosable conduct), and the evidence upon which the findings are based;
  - any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates (if applicable);
  - any action that has been, is being, or is recommended to be, taken, and the evidence on which recommendations are based;
  - any claims made about, and any evidence of, detrimental action taken against the discloser, and the Department's response to those claims and that evidence.

*Note: Where applicable, the report might include, for example, a recommendation that an investigation be conducted, under procedures established under subsection 15(3) of the Public Service Act 1999, into whether an APS employee has breached the Code of Conduct (within the meaning of the Public Service Act 1999).*

2. Within a reasonable timeframe of completion of the investigation, and provided that contact is reasonably practicable, the discloser will be informed that the report has been made and provided with a copy of the report of the investigation, in accordance with the requirements of the Act.

*Note: In certain circumstances as specified in subsection 51(5) of the Act, some material in the report may be deleted from the copy provided to the discloser.*

3. The Department will ensure that, appropriate action is taken in response to recommendations in a report of an investigation, or any other matters raised in such a report, that relate to the Department.

## **6. Confidentiality**

1. The Department will maintain confidentiality in its assessment and investigative processes.
2. Any documentation submitted to the Department relating to a disclosure, whether paper or electronic, should be clearly marked as confidential.
3. Under the Act, it is a criminal offence to use or disclose identifying information about a person who makes a disclosure without that person's consent, unless authorised by the Act.

*Note: The Act sets out in sections 20 and 21 the limited circumstances in which use or disclosure of identifying information about a person who makes a disclosure is authorised (including where the use or disclosure is for the purposes of the Act).*

4. Under the Act, it is a criminal offence to use or disclose information obtained in the course of conducting a disclosure investigation, or otherwise performing a function or exercising a power under the Act, unless authorised by the Act.

*Note: The Act sets out in section 65 the limited circumstances in which use or disclosure of information obtained in the course of conducting a disclosure investigation, or otherwise performing a function or exercising a power under the Act, is authorised (including where the use or disclosure is for the purposes of the Act or for the purposes of taking action in response to a disclosure investigation).*

## **7. Protection and support of disclosers**

1. The Department will take all reasonable steps to ensure the discloser is protected from reprisal, or threats of reprisal, relating to a public interest disclosure.
2. Under the Act, it is a criminal offence for a person (the first person) to take, or threaten, a reprisal against a person (the second person) because, in whole or part, the first person believes or suspects the second person, or any other person, made, may have made or proposes to make, a public interest disclosure.

*Note: What constitutes a reprisal is set out in section 13 of the Act, and includes (without limitation) discriminatory treatment, termination of employment, injury or alteration of employment position to the detriment of the discloser. Reprisal does not include reasonable administrative action taken to protect the discloser from detriment.*

3. The Secretary (or delegate) will assess the risk that reprisal may be taken against the discloser as a result of the disclosure and address that risk (if any) promptly, having regard to all the circumstances.
4. If the discloser has concerns about the risk of reprisal, these concerns should be raised with the Secretary (or delegate), or the Assistant Secretary, People Branch, so that those concerns may be addressed promptly, having regard to all the circumstances.