

Public Interest Disclosure Policy

(1) Who does this policy apply to?

This policy applies to AgriFutures' internal staff members, third party employees, directors and third-party service providers including advisory panel members, external research managers, contractors and consultants (**AgriFutures staff**).

(2) Purpose

The purpose of this policy is to inform AgriFutures staff about 'public interest disclosures' and detail AgriFutures' procedures for dealing with a public interest disclosure, investigating it and reporting the outcome. It also sets out the protection available to AgriFutures staff who make a disclosure. All AgriFutures staff must make and deal with public interest disclosures in accordance with this policy.

(3) Policy statement

- (a) AgriFutures is bound by the Public Interest Disclosure Act 2013 (**PID Act**), which establishes a legal framework for 'public interest whistleblowing' in which allegations of unlawful or improper behaviour can be raised without victimisation or discrimination. It is an offence under the PID Act to take, or threaten to take, a reprisal against an employee who discloses suspected unlawful or improper conduct.
- (b) In line with its obligations under the PID Act, AgriFutures promotes integrity and accountability in the Commonwealth public sector by encouraging the disclosure of information about suspected wrongdoing, protecting people who make disclosures and actioning disclosures in accordance with this policy.

(4) Definitions

For the purpose of this policy:

- (a) 'AgriFutures staff' refers to those persons listed in section (1) of this policy.
- (b) 'Authorised Officers' of AgriFutures are the General Manager, Corporate, and the Manager, Governance and Compliance, as appointed by the Principal Officer.
- (c) 'Principal Officer' is the Managing Director or delegate.
- (d) 'Public Official' is anyone within the meaning of s69 of the PID Act and anyone deemed by the Authorised Officer to be a public official in accordance with s 70 of the PID Act and includes, but is not limited to:
 - (i) AgriFutures staff
 - (ii) Commonwealth public servants

- (iii) members of the Defence Force and appointees of the Australian Federal Police
- (iv) statutory office holders or others who exercises powers under a Commonwealth law
- (v) individuals and organisations that provide goods or services under a Commonwealth contract and their officers or employees

(5) What is a public interest disclosure?

- (a) A public interest disclosure may be an internal disclosure, an external or emergency disclosure or a legal practitioner disclosure (s26(1)).
- (b) An internal disclosure is a disclosure concerning information which shows, on reasonable grounds, '*disclosable conduct*' within an Australian Government agency or by a Public Official.
- (c) AgriFutures staff are encouraged to report any genuine concerns about suspected wrongdoing or unlawful behaviour which they believe may constitute '*disclosable conduct*'.
- (d) Any AgriFutures staff can make a disclosure even if they are unsure about not whether the disclosure is a public interest disclosure. In these circumstances, the Authorised Officer, supervisor or manager will advise the discloser that the information disclosed may be considered a public interest disclosure and so the processes under the PID Act will have to be followed.

Internal Disclosures

- (e) What is '*disclosable conduct*'?

Under s29 of the PID Act, '*disclosable conduct*' covers misconduct in the public sector including, but not limited to, conduct which:

- (i) contravenes Commonwealth, state or territory law or a foreign law that applies to the agency, official or service provider;
- (ii) perverts the course of justice;
- (iii) is illegal, corrupt or fraudulent;
- (iv) constitutes a maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent;
- (v) is an abuse of public trust;
- (vi) involves fabrication, falsification, plagiarism or deception relating to scientific research, or other misconduct in relation to scientific research, analysis or advice;
- (vii) wastes public funds or property;
- (viii) unreasonably endangers health and safety;

- (ix) endangers the environment; or
 - (x) is by a Public Official involving an abuse of their position as a Public Official, or conduct that could give reasonable grounds for disciplinary action against them.
- (f) What is **not** ‘disclosable conduct’?

‘Disclosable conduct’ does not cover:

- (i) instances where a person disagrees with:
 1. a government policy or proposed policy;
 2. actions or proposed actions by a Minister, the Speaker of the House of Representatives or the President of the Senate; or
 3. expenditure or proposed expenditure related to such policy or action;
- (ii) 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;
- (iii) conduct of Members of Parliament but the departments of the Parliament and their employees are covered;
- (iv) the proper performance of the functions and proper exercise of the powers of an intelligence agency or its officials; or
- (v) conduct of a Public Officer that is wholly private and has no bearing on their position as a public official (but conduct by a Public Official is covered if it is in connection with their position as a Public Official).

External, emergency and legal practitioner disclosures

- (a) In limited circumstances a disclosure may also be made:
- (i) to a person or body outside of the government, such as the Commonwealth Ombudsman (**Ombudsman**) or an authorised officer of another agency – this is known as an external disclosure or emergency disclosure. An external disclosure must relate to a previous “internal disclosure” of the information that has not been adequately dealt with and an emergency disclosure relates to disclosures concerning a substantial and imminent danger to health or safety. Such disclosures must also satisfy a number of other requirements; or
 - (ii) to a legal practitioner for the purposes of getting advice about making one of the other forms of public interest disclosure.
- (b) It is anticipated that these disclosures will be rare. For further information on external, emergency and legal practitioner disclosures, refer to the section ‘Who can a public interest disclosure be made to?’ in the Agency Guide to the PID Act (found [here](#)).

(6) Who can make a disclosure?

To make a public interest disclosure, a person must be a current or former Public Official.

(7) Who can a disclosure be made to?

Within AgriFutures

- (a) To gain the protections available under the PID Act, a public interest disclosure must be made to an 'appropriate person' (s26). An appropriate person at AgriFutures is either the discloser's supervisor or manager, the Authorised Officer or the Principal Officer.

Direct to the Commonwealth Ombudsman

- (b) A person may choose instead to make a public interest disclosure directly to the Ombudsman via the following email address: pid@ombudsman.gov.au, if they believe on reasonable grounds that it would be appropriate for the Ombudsman to investigate.
- (c) The Ombudsman will investigate an internal disclosure if it considers that a special reasons exist to conduct an investigation. Otherwise, it will allocate the matter to the agency where the disclosable conduct is alleged to have occurred, or to a prescribed investigative agency with appropriate jurisdiction.
- (d) If the matter involves an intelligence agency or intelligence-related information, the disclosure must be made to an authorised officer of an intelligence agency or to IGIS. For further information, refer to the section 'Who can a public interest disclosure be made to?' in the Agency Guide to the PID Act (found [here](#)).

To other agencies

- (e) 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.

(8) Rights of the discloser

Confidentiality

- (a) Disclosers do not have to identify themselves and may remain anonymous (s 28(2)). Alternatively, disclosers may use a pseudonym throughout the PID process.

Protection from reprisal

- (b) AgriFutures staff who make a public interest disclosure under the PID Act must be protected from reprisal in the following ways:
 - (i) immunity from any civil, criminal or administrative liability (including disciplinary action) for making the public interest disclosure; and
 - (ii) 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.
- (c) In the event that reprisals are taken, compensation, injunctions, reinstatement, apology or a combination of these remedies may be available.

(9) Responsibilities of the discloser

- (a) A person who makes a public interest disclosure:
 - (i) must 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;
 - (ii) anonymously must not identify themselves at any stage to anyone, including the Authorised Officer who receives the disclosure;
 - (iii) must 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; and
 - (iv) must be prepared to provide further information to help the investigator, as this will often be required. Under the PID Act, all AgriFutures staff must use their best endeavours to assist in any investigation.

(10) Procedure for making a disclosure

- (a) There is no formal process prescribed for the making of a public interest disclosure. AgriFutures staff are encouraged to contact the Authorised Officer if they wish to make a public interest disclosure. A disclosure may also be made to the person's supervisor or manager, however, supervisors will need to notify the Authorised Officer of the disclosure.
- (b) A disclosure can be made orally (either in person or by telephone) or in writing (including email). If a person making a disclosure wishes to remain anonymous, they do not have to identify themselves (for example, they can use an email address from which the person's identity cannot be determined).

- (c) The AgriFutures' website has a designated email address for staff or other officers to lodge a disclosure. The email address is pid@agrifutures.com.au. This email address is only accessible by the Authorised Officer and the Managing Director.
- (d) The information disclosed should be sufficiently detailed so as to enable the Authorised Officer to make an assessment of whether it is a public interest disclosure.
- (e) A list of Authorised Officers is available on the Intranet at <http://intranet/Pages/Public-Interest-Disclosures.aspx>
- (f) If the public interest disclosure is in relation to the conduct of the Principal Officer, the Authorised Officer or member(s) of the Board, the disclosure should be directed to the Ombudsman (see paragraph (7)(b) above).

(11) Procedure for handling a public interest disclosure

- (a) If the public interest disclosure is made to a supervisor or manager, they must refer the disclosure to the Authorised Officer.
- (b) Once a disclosure is received, the Authorised Officer must:
 - (i) promptly examine the information and decide whether it is an internal disclosure under the PID Act and if it is determined that the disclosure:
 1. is not an internal disclosure, the discloser should be notified and appropriate records kept; or
 2. is an internal disclosure, the Authorised Officer must allocate the disclosure to the Principal Officer for handling within 14 days of receiving it, unless an exception applies. The Authorised Officer may contact the discloser for further information prior to making the decision to allocate.

If the information relates to another agency, the Authorised Officer may allocate the public interest disclosure to that other agency for investigation. In this event, the Authorised Officer must notify the discloser, the principal officer of the other agency and the Ombudsman.

For further information on allocations, refer to the section 'Allocation under the Act' in the Agency Guide to the PID Act (found [here](#)) and the flowchart in Attachment 1;

- (ii) if the disclosure is verbal, make a written record of the information disclosed;

- (iii) advise the discloser:
 - 1. that the information provided may be considered a public interest disclosure under the PID Act and that are they obliged to pass the information on to the Principal Officer for investigation;
 - 2. of protections from reprisals, in relation to the disclosure of the disclosable conduct, available to them under the PID Act;
 - 3. 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 Authorised Officer and the Principal Officer; and
 - 4. what the PID Act requires in order for the disclosure to be an internal disclosure;
 - (iv) confirm with the discloser the nature of the information, and obtain the discloser's consent to provide their details to the Principal Officer.
- (c) Once an Authorised Officer has allocated a public interest disclosure, the Authorised Officer must:
- (i) advise the Ombudsman that a public interest disclosure has been made using the form in **Attachment 2** (Notification of Allocation) and keep appropriate records; and
 - (ii) assess the risk of reprisals and possible actions to be taken to protect the discloser with regard to these risks.
- (d) The Principal Officer must:
- (i) if required, contact the discloser for further information to assist in the investigation of the matter;
 - (ii) as soon as reasonably practicable after the matter is allocated to them, inform the discloser that they are required to investigate the disclosure and the estimated length of the investigation;
 - (iii) investigate the disclosure and complete it within 90 days of the disclosure being allocated. The investigation must comply with the PID standards (s74). The Principal Officer may decide not to investigate the disclosure, or to stop investigating it, if one of the grounds in s48 of the PID Act applies, in which case the discloser must be notified in writing and the decision recorded using the form in **Attachment 3** (Notification Not to Proceed with an Investigation) and forwarded to the Ombudsman; and

- (iv) on completion of the investigation, prepare a written report of the investigation setting out:
 - 1. the matters considered during the investigation;
 - 2. the duration of the investigation;
 - 3. the findings (if any);
 - 4. the action (if any) that has been, is being, or is recommended to be, taken; and
 - 5. 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.
- (v) give a copy of the report to the discloser within a reasonable time.
- (e) A person who receives and investigates a public interest disclosure that is, a supervisor, an Authorised Officer or Principal Officer must identify whether the disclosure is an anonymous disclosure (e.g. from an email address from which the person's identity cannot be determined) and, if so, treat it as an anonymous disclosure. They must not reveal the discloser's identity during, or after, the public interest disclosure process without the discloser's consent.
- (f) The procedure for handling public interest disclosures is summarised in the flow chart in Attachment 1. For more information on the examination and investigation process, refer to the Agency Guide to the PID Act (found [here](#)).

(12) Request for Extension

If required, AgriFutures may seek an extension of time from the Ombudsman to complete their investigation using the form in **Attachment 4** (Request for an Extension of Time). The request must be made no later than 21 days prior to the expiry of the investigation completion date. Forms must be forwarded to the following email address: PID@ombudsman.gov.au.

(13) Withdrawing a Public Interest Disclosure

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.

(14) Legislation and additional Resources

- (a) *Public Interest Disclosure Act 2013* (accessible [here](#))
- (b) *Public Interest Disclosure Standard 2013* (accessible [here](#))
- (c) Commonwealth Ombudsman's website (accessible [here](#))

(d) Information sheets:

- Agency Guide to the Public Interest Disclosure Act 2013, Version 2 – April 2016 (found [here](#))
- How to make a public interest disclosure (found [here](#))
- Responsibilities of principal officers of Commonwealth agencies (found [here](#))
- The role of authorised officers (found [here](#))

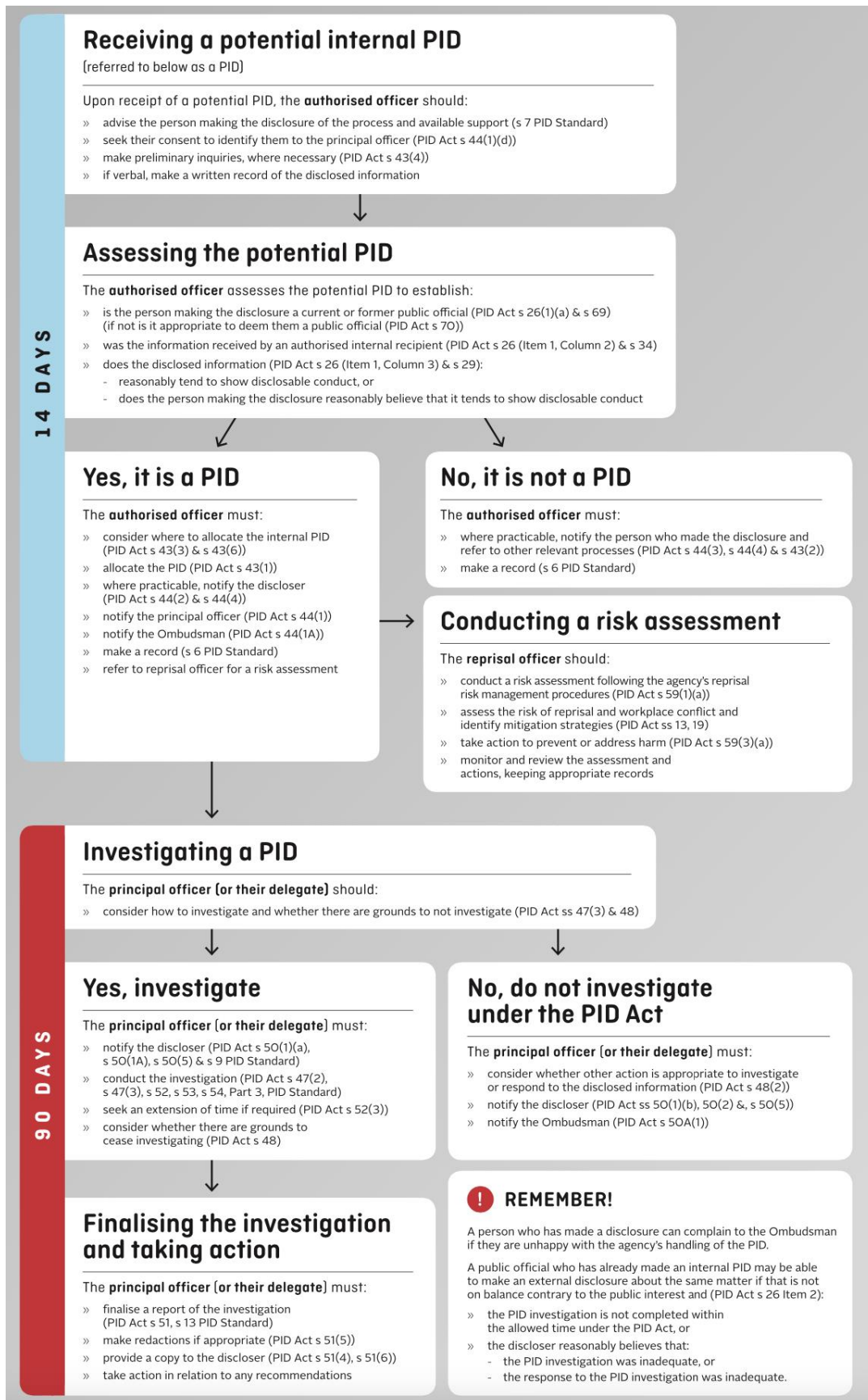
(15) Associated Forms

Attachment 2: Notification of Allocation Form

Attachment 3: Notification of Decision not to Investigate Form

Attachment 4: Request for Extension of Time Form

Attachment 1 - Flow Chart



Attachment 2 - Notification of Allocation

Under the *Public Interest Disclosure Act 2013* the Commonwealth Ombudsman, or IGIS if the information relates to an intelligence agency, must be notified when an agency has allocated a disclosure (s 44(1A)). In accordance with s 43(5) an authorised officer of the agency must use his or her best endeavours to decide the allocation within 14 days after the disclosure is made.

Notification forms should be completed and provided to the Ombudsman (unless it relates to an intelligence agency) within 10 working days, or as soon as reasonably practicable, of the allocation. Forms are to be forwarded to the following email [address: PID@ombudsman.gov.au](mailto:PID@ombudsman.gov.au).

The discloser's name and contact details must only be provided to the Ombudsman where the discloser has consented to the information being provided (s 44(1)(d)).

Agency information

Receiving agency	
Your reference number	
Date disclosure received	<i>{Date disclosure made to authorised officer}</i>
Allocation date	Click here to enter a date.
Accepting agency	<i>{Agency to which the disclosure was allocated}</i>
Accepting agency's reference number	
Who was the disclosure first made to?	Choose an item.

Discloser's details

Is the discloser anonymous - Choose an item.

Has consent been granted to provide details - Choose an item.

Name	
Address	
Contact number	
Email address	
Status of discloser	Choose an item.
Date discloser informed of the allocation decision (optional)	Click here to enter a date.

Disclosed Information

Nature of disclosure 1	Choose an item.
Nature of disclosure 2	Choose an item.
Details of information disclosed	<i>{Provide a brief summary of the information disclosed}</i>

Attachment 3 - Notification of decision not to investigate

Under the *Public Interest Disclosure Act 2013* the Commonwealth Ombudsman, or IGIS if the information relates to an intelligence agency (s 50A(2)), must be notified with reasons when an agency has decided to not investigate a disclosure or not investigate further (s 50A(1)).

Notification forms should be completed and provided to the Ombudsman (unless it relates to an intelligence agency) within 10 working days, or as soon as reasonably practicable, of the decision to not investigate a disclosure or not investigate further. Forms are to be forwarded to the following email address: PID@ombudsman.gov.au.

Agency Information

Reasons to not Investigate or not Investigate Further

Agency	
Your reference number	
Date disclosure allocated	Click here to enter a date.
Decision date	Click here to enter a date.

Had investigation commenced	Choose an item.
Reason for decision to not investigate or not investigate further 1	Choose an item.
Reason for decision to not investigate or not investigate further 2	Choose an item.
Details of decision	<i>{Provide a brief summary of the decision}</i>
Date discloser informed of the decision (optional for agencies to complete this question)	<i>{Or indicate if there is no way of contacting the discloser}</i> Click here to enter a date.

Attachment 4 - Request Extension of Time

Under the *Public Interest Disclosure Act 2013* agencies have 90 days from the date of allocation to investigate a disclosure and prepare a report on the investigation (s 52). Agencies may seek an extension of time from the Commonwealth Ombudsman, or IGIS if the information relates to an intelligence agency, to complete its investigation (s 52(3)).

Requests for an extension of time should be sought from the Ombudsman (unless it relates to an intelligence agency) no later than 21 days prior to the expiry of the investigation completion date. Forms are to be forwarded to the following email address: PID@ombudsman.gov.au.

Agency Information

Agency	
Your reference number	
Date disclosure allocated	Click here to enter a date.

Extension Request Details

Length of extension sought	
Reason for extension	
Action taken to progress investigation	<i>{Provide timeline of actions taken since commencement of allocation}</i>
Is this the first request for an extension?	Choose an item.
Extensions sought and granted	<i>{Provide details of previous extensions sought and granted}</i>
Has discloser's view been sought? (optional for agencies to complete this question)	Choose an item. <i>{If yes briefly explain the discloser's view}</i>