



Australian Government



Northern Australia Infrastructure Facility

Public Interest Disclosure Policy

August 2018

www.naif.gov.au

Contents

1.	Scope.....	3
2.	Definitions.....	3
3.	Review and Approval	3
4.	Public interest disclosures.....	4
4.1	Who can make a public interest disclosure?	4
4.2	What can be reported?	4
4.3	How a public interest disclosure can be made.....	4
5.	Obligations of NAIF Staff	5
5.1	Principal officer	5
5.2	Supervisors	5
5.3	Authorised officers	6
5.4	All Staff.....	6
6.	Assessment of risks of reprisal	6
7.	Confidentiality	7
8.	Protections provided to the discloser	7
9.	Investigation.....	7
10.	Record keeping and reporting.....	8
10.1	Keeping the discloser informed	8
11.	Seeking assistance.....	8

Document Purpose

The purpose of the Public Interest Disclosure Policy (Policy) is to inform Commonwealth officials of the Northern Australia Infrastructure Facility's (NAIF) approach to dealing with public interest disclosures relating to NAIF under the *Public Interest Disclosure Act 2013* (PID Act).

The PID Act promotes integrity within the Commonwealth public sector by providing a framework for Commonwealth officials to report suspected wrongdoing and for agencies to investigate and respond to such disclosures.

NAIF is committed to maintaining the highest standards of ethical and accountable conduct and ensuring that individuals who make public interest disclosures are provided with the protections available under the PID Act.

NAIF has developed a detailed process for reporting, investigating and responding to disclosures under the PID Act. Although the Policy is not a statement of the law this Policy reflects relevant legal requirements of the PID Act.

1. Scope

This Policy applies to all public officials under the PID Act and includes all current and former NAIF Staff as well as NAIF Directors. The Policy sets out:

- who can make a public interest disclosure;
- what can be reported;
- how a public interest disclosure can be made; and
- NAIF's policy on how a public interest disclosure will be investigated.

2. Definitions

Authorised officer means the principal officer as well as an officer authorised by the principal officer to be an authorised officer under the PID Act.

Disclosable conduct is, in broad terms, conduct by an agency, a public official (generally, in their capacity as a public official) or a contracted Commonwealth service provider (in connection with the contract) that:

- contravenes the law
- is corrupt
- perverts the course of justice
- results in wastage of public funds
- is an abuse of public trust
- unreasonably endangers health and safety or endangers the environment
- is maladministration, including conduct that is unjust, oppressive or negligent,
- conduct by a public official that, if proved, would give rise to disciplinary conduct against the official

but excludes government policy, action or expenditure with which a person disagrees. The full definition of 'disclosable conduct' is set out in section 29 of the PID Act.

Discloser means an individual who discloses information.

Disclosure means information disclosed by a discloser.

PID Act means the *Public Interest Disclosure Act 2013*.

Principal officer means the CEO or their delegates as appointed from time to time.

Public interest disclosure means a disclosure made by a discloser who is or was a public official to an authorised officer or a supervisor of the discloser with 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.

Public official is a broad term which includes any person who is or was employed or appointed by the Australian Government, staff of Commonwealth companies, Commonwealth authorities and statutory agencies, the Parliamentary Service, Commonwealth statutory officeholders and service providers under a contract to the Commonwealth or a Commonwealth authority, and includes all current and former NAIF Staff and Directors.

Staff are persons employed by, or operating under an employment or similar contract with NAIF including full time or part time Staff, consultants, contractors and Efic personnel under a service level agreement.

Supervisor, in relation to a public official, is a person who supervises or manages the public official.

3. Review and Approval

This Policy will be reviewed by the NAIF Board annually, or more frequently if required, to approve material changes to ensure it remains aligned with governing legislation and best practice.

The Manager, Governance, Compliance and Risk will ensure material changes to the Policy are communicated to Staff in a timely manner.

4. Public interest disclosures

4.1 Who can make a public interest disclosure?

A current or former public official can make a public interest disclosure and such a disclosure can be made anonymously.

4.2 What can be reported?

A current or former public official can disclose information that they believe on reasonable grounds tends to show one or more instances of disclosable conduct.

4.3 How a public interest disclosure can be made

There are four types of public interest disclosures under the PID Act: internal disclosures, external disclosures, emergency disclosures and legal practitioner disclosures.

Internal Disclosures

Generally, public officials in NAIF should make a disclosure to NAIF in the first instance.

An internal disclosure can be made to NAIF about disclosable conduct carried out by public officials who belong to NAIF, or who belong to other Commonwealth agencies.

A current or former public official can make the disclosure in person, by telephone or in writing, including by email. The disclosure can be made either to the discloser's supervisor (for current Staff), or to an authorised officer in NAIF, including the CEO.

The discloser can remain anonymous although NAIF has the discretion not to investigate if NAIF is unable to progress an investigation because it cannot contact the discloser to seek further information.

In addition, if the discloser believes on reasonable grounds that it is appropriate for the Commonwealth Ombudsman to investigate instead of NAIF, they can make an internal disclosure directly to the Ombudsman.

External Disclosures

An external disclosure to another person or body (including to the media, but excluding a foreign public official) will only be justified when:

- an internal disclosure of the same information has previously been made;
- the person believes on reasonable grounds that the investigation of their internal disclosure was inadequate or the response to the investigation was inadequate or the investigation was not completed within the time limit;
- the disclosure would not be on balance contrary to the public interest;
- the disclosure does not relate to intelligence information or to an intelligence agency; and
- only information reasonably necessary to identify the wrongdoing is disclosed.

Emergency Disclosures

A current or former public official can make an emergency disclosure to a party external to NAIF (but excluding a foreign public official), where the person believes on reasonable grounds the information concerns a substantial and imminent danger to the health or safety of a person or people or the environment and:

- where the information does not include intelligence information, and
- where the information disclosed is no more than is necessary to alert the recipient to the danger, and
- where, if the discloser has previously made an internal disclosure of the same information, there are exceptional circumstances justifying this disclosure before an investigation of the internal disclosure has been completed, or
- where, if the discloser has not previously made an internal disclosure of the same information, there are exceptional circumstances justifying the discloser's failure to make such an internal disclosure.

Legal Practitioner Disclosures

A current or former public official can make a disclosure to an Australian legal practitioner for the purpose of obtaining legal advice in relation to making a public interest disclosure:

- where the information does not include intelligence information, and
- where the recipient of the disclosure holds the appropriate security clearance, if the discloser knew or ought to have known that the information has a national security or other protective security classification.

5. Obligations of NAIF Staff

5.1 Principal officer

NAIF's principal officer is responsible for:

- establishing procedures to deal with public interest disclosures
- ensuring public officials who belong to NAIF are aware of the procedures and the protections available
- carrying out the role of authorised officer
- appointing authorised officers to receive disclosures, and ensuring that there are sufficient authorised officers to make them readily accessible
- ensuring that public officials who belong to NAIF are aware of the identity of each authorised officer
- ensuring disclosures are properly investigated
- protecting public officials who belong to NAIF from reprisals or threats of detriment if they make a public interest disclosure
- taking appropriate action in response to an investigation report
- keeping records in relation to the handling of disclosures
- providing information to the Ombudsman.

5.2 Supervisors

If the supervisor of a public official in NAIF believes that the information given to them by that person concerns, or could concern, disclosable conduct, they must give that information to an authorised officer in NAIF as soon as reasonably practicable. However, because of the confidentiality requirements, the supervisor should obtain the person's consent before passing on their identifying information. If the discloser wishes to remain anonymous, the supervisor must pass on as much of the information contained in the disclosure as possible and in a manner that does not reveal the identity of the discloser. Supervisors also have a role in assessing, or helping the authorised officer to assess the risks of reprisal action against a discloser.

Supervisors also have a key role in ensuring that the workplace culture supports the making of public interest disclosures. They can help to do so by:

- being knowledgeable about the PID Act, particularly in relation to confidentiality requirements
- being approachable to Staff who wish to raise concerns
- ensuring Staff undergo available training
- confronting any workplace prejudices about making a disclosure
- supporting a Staff member who they know has made a public interest disclosure and ensuring they are protected from reprisal
- increasing supervision of the workplace if necessary (for example, if workplace conflict occurs because a disclosure has been made or an investigation is under way)
- not trying to fix a problem raised by a public interest disclosure without first getting advice from the CEO
- setting an example for Staff.

5.3 Authorised officers

Authorised officers have a range of decision-making, notification and other responsibilities under the PID Act, including:

- receiving disclosures from current or former public officials about disclosable conduct
- deeming a person who is not a current or former public official to be a public official to facilitate the making of a public interest disclosure
- deciding whether to inform a person who may be unaware of the PID Act requirements that information could be treated as an internal disclosure, explaining the requirements of the PID Act and advising the person of any designated publication restrictions that may affect disclosure
- assessing reported information to determine if there are no reasonable grounds to believe the information could be considered to be a public interest disclosure
- assessing the risks of reprisal action against the discloser
- making any preliminary inquiries necessary to make an allocation decision including establishing whether the discloser consents to having their name and contact details passed on to the principal officer; (if the discloser wishes to be anonymous, the authorised officer must allocate as much of the information contained in the disclosure as possible, but in a manner that does not reveal the name or contact details of the discloser)
- allocating the disclosure to the principal officer of their agency and/or another agency, with that other agency's consent, desirably within 14 days of becoming aware of the disclosure
- informing the principal officer of each relevant agency of allocation decisions and associated information
- informing the discloser of the allocation decision
- consenting to the allocation to NAIF of a disclosure by an authorised officer of another agency
- advising the discloser of a decision not to allocate, the reasons why and any other course of action that may be available under Commonwealth law
- keeping records relating to the handling of disclosures.

5.4 All Staff

The PID Act requires all public officials to use their best endeavours to assist the principal officer in the conduct of an investigation, noting that:

- public officials have a common law right to silence in a PID Act investigation
- the PID Act also gives witnesses in a PID Act investigation certain legal protections.

Beyond those specific responsibilities, all Staff share the responsibility of ensuring the PID Act works effectively. Their role includes:

- reporting matters where there is evidence that shows or tends to show disclosable conduct
- identifying areas where there may be opportunities for wrongdoing to occur because of inadequate systems, and proactively raising those with management
- supporting Staff who they know have made public interest disclosures
- keeping confidential the identity of a discloser and anyone against whom an allegation has been made, if they become aware of those matters.

6. Assessment of risks of reprisal

As soon as possible after a public interest disclosure is received, an authorised officer must assess risks that reprisal may be taken against a person who makes a public interest disclosure. If the disclosure is made to the supervisor and the person wishes their identity to remain anonymous, the supervisor must conduct a risk assessment as soon as possible after the public interest disclosure is made.

The person assessing the risk, in consultation with the NAIF CEO, where appropriate, will plan and implement strategies to control the risks of reprisals or related workplace conflict. Where possible, the discloser will be consulted before any decision is made.

The risk assessment should be monitored and reviewed by the risk assessor as necessary including by checking with the discloser to see if reprisals have been made or threatened.

7. Confidentiality

NAIF will make every reasonable effort to protect the discloser's identity. It is a criminal offence for a public official who is involved in handling a disclosure to reveal the discloser's identifying information to anyone else without their consent or use it for another purpose, unless it is for the purposes of the PID Act, an investigation by the Ombudsman, or another Commonwealth law or prescribed law, or if the information has already lawfully been published.

However, the discloser's identity, or information that would effectively identify them, may need to be disclosed to certain other people if that is necessary:

- to investigate the disclosure effectively (for example, if the wrongdoing that was reported was directed solely against the discloser)
- to protect them against reprisals (for example, if there are concerns that it is impossible for them to remain in their current workplace) or
- because of a requirement of law, including procedural fairness.

If it is necessary or highly likely that the discloser's identity will be revealed, NAIF will, unless it is not reasonably practicable, discuss this with the discloser before proceeding.

8. Protections provided to the discloser

The PID Act provides the following protections for persons who make a public interest disclosure:

- The person will not be subject to any civil, criminal or administrative liability for making the disclosure unless their disclosure was knowingly false or misleading.
- No contractual or other remedy may be enforced or sanction imposed on the person for making the disclosure.
- The person has absolute privilege (for the purpose of defamation proceedings) in respect of a public interest disclosure.
- A contract to which the person is a party must not be terminated on the basis that the disclosure constitutes a breach of contract.
- It is a criminal offence for a person to take, or threaten to take, reprisal action against a person who has made, or who is thought to have made, a public interest disclosure.
- Other remedies, including compensation and injunctions, may also be available in respect of reprisal actions under the PID Act or the Fair Work Act 2009 (although an application may only be made under one Act).
- The general workplace protections offered by Part 3-1 of the *Fair Work Act 2009* will apply in relation to the making of a public interest disclosure by a public official who is an employee within the meaning of that Act.

The protections from liability do not apply to protect the discloser in relation to their own wrongdoing.

9. Investigation

NAIF will investigate public interest disclosures which contain enough information to support further enquiry subject to its discretion not to investigate in certain circumstances.

The principal officer is responsible for conducting an investigation and may delegate those powers and functions to a public official in the agency by an instrument.

Investigations under the PID Act will be conducted by an independent investigator skilled in conducting investigations, and familiar with the PID Act and PID Standard any other relevant procedures, especially the confidentiality requirements and the protections for the discloser.

The principal officer must take appropriate action in response to a recommendation and other matters contained in the investigation report.

10. Record keeping and reporting

The authorised officer must keep secure and confidential records of public interest disclosures and 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. A PID Act investigator must also keep records of their investigation secure and confidential.

The following details will be disclosed by the principal officer to the Commonwealth Ombudsman as required under the Public Interest Disclosure Standard 2013:

- the number of public interest disclosures received by authorised officers of NAIF during the relevant financial year
- the kinds of disclosable conduct to which those public interest disclosures related
- the number of disclosure investigations that the principal officer of NAIF conducted during the relevant financial year
- the actions that the principal officer took during the relevant financial year in response to recommendations in reports relating to those disclosure investigations
- any other information requested by the Ombudsman.

10.1 Keeping the discloser informed

The discloser will be notified at various stages in the process, provided the person's contact details are available. The discloser must be advised:

- when the disclosure is either allocated for investigation, or not allocated because it has been determined not to be an internal disclosure
- of information about the principal officer's discretionary powers to not investigate within 14 days of the disclosure being allocated
- if the principal officer decides to investigate under the PID Act, the estimated length of the investigation
- if the principal officer decides not to investigate, the reasons for the decision and any action that might be available to the discloser under other Commonwealth laws
- if an investigation is conducted under the PID Act and an extension of time is granted by the Ombudsman, the progress of the investigation
- when the investigation report is completed and they must be provided with a copy of the report (which may be redacted).

11. Seeking assistance

If you have any queries or need any assistance, you may wish to discuss these queries with your supervisor or an authorised officer in the NAIF, including the CEO.

General information on the Public Interest Disclosure scheme is also available on the Commonwealth Ombudsman's website: <http://www.ombudsman.gov.au/pages/pid/>