



Procedure for Public Interest Disclosures



Introduction from TEQSA's Chief Executive Officer

The Tertiary Education Quality and Standards Agency (TEQSA), its managers and staff are committed to the highest standards of ethical and accountable conduct. TEQSA recognises that support for staff who make a public interest disclosure will greatly influence the success of the public interest disclosure scheme, and gives TEQSA the best chance to fix problems directly.

These procedures are part of TEQSA's commitment. I encourage TEQSA staff and others working with TEQSA to familiarise themselves with the procedures and with the public interest disclosure scheme more generally. Further information about the scheme is provided in [the Commonwealth Ombudsman's Guidelines](#).

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Acting Chief Executive Officer

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1. Purpose

These procedures are made under section 59 of the *Public Interest Disclosure Act 2013* (PID Act). The purpose of these procedures is to outline how the PID Act operates in TEQSA.

Consistent with the PID Act, TEQSA will:

- a) encourage and facilitate the making of disclosures by public officials in the Commonwealth public sector
- b) ensure that public officials who make PIDs are supported and protected from adverse consequences relating to the making of a disclosure
- c) ensure that PIDs are properly investigated and dealt with.

The PID Act and these procedures complement other notification, investigation and complaint handling schemes in the Commonwealth public sector. These include TEQSA's Fraud Control and Anti-Corruption Plan, TEQSA's procedures for determining breaches of the APS Code of Conduct and arrangements in TEQSA for dealing with HR issues between individual staff members.

TEQSA staff and other public officials should use these procedures to make public interest disclosures relating to TEQSA.

2. What is a Public Interest Disclosure?

A disclosure of information is a "public interest disclosure" for the purposes of the PID Act (a PID) if it meets the following requirements:

- a) it is made by a public official or a person who has been a public official
- b) 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
- c) the disclosure is made to an appropriate person.

If each of the above requirements has been met the disclosure will be covered by the PID Act and the discloser will have the benefit of the protections the PID Act confers.

Definitions

"Authorised Officer" is a person to whom a PID can be made in TEQSA.

"Disclosable Conduct" includes a wide range of wrongful conduct engaged in by an agency or a public official in connection with his or her position as a public official, including but not limited to conduct that:

- a) is corrupt
- b) contravenes a law
- c) perverts the course of justice
- d) results in the wastage of public funds or property
- e) is an abuse of public trust
- f) unreasonably endangers the health and safety of others
- g) is maladministration including conduct that is unjust, oppressive or negligent.



“Public Official” includes current or former APS employees and statutory office holders of TEQSA as well as TEQSA’s contracted service providers and employees and subcontractors of those providers who provide services under a contract with TEQSA.

A person wishing to make a disclosure and who was not a public official at the time they obtained the information may be deemed to be a public official. The Authorised Officer does this by issuing a written notice to the person stating that the PID Act has effect, and is taken to have always had effect, in relation to the disclosure of the information as if they had been a public official at the time they obtained the information.

3. Making a Public Interest Disclosure

Generally public officials wanting to make a PID about misconduct by TEQSA or its public officials should make an internal disclosure in the first instance to an Authorised Officer.

A PID may be made to a supervisor, who is required to give the information to an Authorised Officer of TEQSA. Where a supervisor is aware that a person has made a public interest disclosure, they must monitor the work environment for signs of detriment and if necessary, take corrective action early. A manager or supervisor who is aware that a person has made a public interest disclosure must also take reasonable steps to support the discloser.

Allegations concerning an Authorised Officer should be referred directly to another Authorised Officer or to the CEO.

The Authorised Officers to whom internal PIDs can be made in TEQSA are:

- a) Chief Executive Officer
- b) Executive Director, Regulatory Operations
- c) Director, Corporate
- d) General Counsel.

The Authorised Officers may be contacted by:

- a) email: review@teqsa.gov.au (please note, this inbox is managed by TEQSA’s Legal Group. If you wish to approach another group then please use the phone number below); or
- b) telephone: 1300 739 585 - ask for the Chief Executive Officer, the Executive Director, Regulatory Operations, the Director, Corporate, the General Counsel or for other groups within TEQSA.

Making an internal PID to TEQSA gives the agency the chance to investigate the matter and remove any danger or correct any wrong practices as quickly as possible.

Internal PIDs may also be made to the Commonwealth Ombudsman, if the discloser believes on reasonable grounds that it would be appropriate for the PID to be investigated by the Ombudsman.

Orally or in writing

PIDs may be made orally or in writing. A written PID, accompanied by any relevant supporting information or evidence will facilitate the investigation of the PID. Relevant information to be provided with a disclosure may include:

- a) the nature of the wrongdoing
- b) who the discloser thinks committed the wrongdoing
- c) when and where the wrongdoing occurred



- d) relevant events surrounding the disclosed conduct
- e) if the discloser did anything in response to the wrongdoing
- f) others who know about the wrongdoing
- g) concerns about possible reprisal as a result of making the PID.

Disclosures should be clear and factual, and avoid speculation, personal attacks and emotive language. The discloser should ensure that the Authorised Officer understands the disclosure is a PID so that the necessary process may be commenced and the protections available under the PID Act apply.

Anonymity and confidentiality

Disclosures may be made anonymously. However, the successful investigation of a PID often depends on the ability of the investigating officer to obtain further information from the discloser. By remaining anonymous, the discloser may limit the possibilities of the PID being resolved and make it difficult to ensure protection from reprisal.

TEQSA's Authorised Officers will take all reasonable steps to protect the identity of a public official who has made a PID.

All documentation relating to a PID must be stored in a separate confidential file and secured in a locked area.

It is an offence for a public official to reveal the discloser's identifying information to anyone else without their consent or to use it for another purpose, other than in accordance with the PID Act. It is also an offence for a person who has information obtained in the course of conducting a disclosure investigation or in connection with their powers and functions under the PID Act to disclose or use the information, except for the purposes of the PID Act.

If it is necessary or highly likely that the discloser's identity will be revealed, an Authorised Officer will discuss this with the discloser before proceeding. This may involve seeking the discloser's consent to reveal their identity to appropriate people.

Internal disclosures

There are 4 types of public interest disclosures under the PID Act: internal disclosures, external disclosures, emergency disclosures and legal practitioner disclosures. These procedures deal with TEQSA's approach to internal disclosures – information about other types of disclosures is available at <http://www.ombudsman.gov.au>.

4. Handling and investigating disclosures

Initial consideration and allocation

1. Managers and supervisors receiving disclosures should refer the disclosure to an Authorised Officer as soon as practicable and without delay.
2. When an Authorised Officer receives a disclosure of information, he or she will consider the information disclosed and determine whether there are reasonable grounds on which to consider whether it constitutes an internal disclosure under the PID Act.



3. If reasonable grounds exist to consider the disclosure a PID, the Authorised Officer must, within 14 days of becoming aware of the disclosure, allocate the matter to the CEO (or delegate) or to another agency which consents to the allocation, and inform the discloser in writing.
4. If the disclosure is not considered to be a PID and it is reasonably practicable to contact the discloser, the Authorised Officer must inform the discloser in writing of the reasons for the decision and of any other course of action that may be available under other laws of the Commonwealth.
5. If the disclosure relates to conduct that may need to be addressed under any other of TEQSA's policies or procedures, the Authorised Officer should refer the matter to be dealt with accordingly.
6. The Authorised Officer must keep a record of:
 - the decision to allocate the disclosure including the name of the agency to which the disclosure has been allocated (if outside TEQSA), the consent given by the outside agency, and the reasons for the decision
 - the date and time the discloser was notified, the means by which the discloser was notified, and the content of the notification.

Reprisal risk assessment

As soon as possible after a disclosure has been received, the Authorised Officer must conduct a reprisal risk assessment to identify the possible risks of reprisals against the discloser and others including any person whom others might think is the discloser, the discloser's supervisor and key witnesses.

A 'reprisal' 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' includes any disadvantage to a person, including dismissal, injury in their employment, discrimination between them and other employees or alteration of their position to their disadvantage. For example, it could include an action (or threat of action) that results in:

- a) a physical or psychological injury, including a stress-related injury
- b) intimidation, harassment or victimisation
- c) loss or damage to property
- d) disadvantage to a person's career (for example, denying them a reference or a promotion without appropriate reasons).

The assessment must consider the specific behaviour and circumstances that may result in reprisals, which will include not only the risk of direct reprisal against the discloser, but also the risk of related workplace conflict or difficulties. In conducting the reprisal risk assessment, the Authorised Officer makes enquiries about the risk of reprisal or workplace conflict by talking with the discloser and any others who may be potentially at risk and observing interactions in the workplace.

Criteria to use include but are not limited to:

- subject matter and significance of the issue disclosed and likely outcome if the facts are substantiated
- how many people implicated in the PID
- if the alleged wrongdoing directed at the discloser
- likelihood of discloser identification
- history of conflict between discloser and subject(s) of PID and specific threats



- who knows about the disclosure
- culture of the workplace.

Where the reprisal risk is rated more than low, a risk mitigation strategy should be developed, involving:

- regular communication with the discloser to monitor their wellbeing
- appropriate harm minimisation steps such as nominating a support person for the discloser
- continual monitoring and reassessment of risk and application of additional support and mitigation when required, such as when key witnesses are interviewed.

Protection and support for disclosers

The PID Act provides the following protections for persons who make an internal PID:

- a) protection of the discloser's identity
- b) immunity from civil, criminal or administrative liability
- c) protection from reprisal.

These protections do not necessarily protect the discloser in relation to their own wrongdoing, including where they have been involved in the misconduct they are reporting.

Authorised Officers should inform disclosers that they must:

- be discreet about the fact that they have made a PID and about the contents of the disclosure, to ensure that they retain the protections in the PID Act
- disclose any confidential information about the PID, including information that would identify those alleged to have committed wrongdoing or other information that they have a duty to keep confidential.

TEQSA will take steps to support those who make public interest disclosures, including by:

- a) acknowledging that making the PID was the right thing to do and is valued
- b) taking all reasonable steps necessary to protect the discloser and their identity
- c) appointing a support person to check on the discloser's wellbeing
- d) providing information about the progress and outcome of any investigation
- e) providing information about and access to the Employee Assistance Program.

Consideration and investigation

Within 14 days of allocation of a PID to TEQSA, the CEO (or delegate) must inform the discloser of his discretionary powers in determining whether or not to investigate the disclosure.

1. The CEO (or delegate) may decide not to investigate a disclosure where, for instance, where the information does not to any extent concern serious disclosable conduct, the disclosure is frivolous or vexatious or the information is the same or substantially the same as information that has been or is being investigated
2. If reasonably practicable, contact the discloser to inform them of the decision not to investigate, the reasons for that decision and any other courses of action that might be available under other Commonwealth laws
3. Inform the Ombudsman of the decision and reasons.



Where the CEO (or delegate) considers that the matter warrants an investigation, the CEO (or delegate) may investigate the matter. The discloser should be informed of the investigation and the estimated timeframe for completion.

Conduct of the investigation

The investigation must be conducted in accordance with the Australian Government Investigation Standards and any other applicable requirements, including the Commonwealth Fraud Control Guidelines and TEQSA's procedures for APS Code of Conduct Determinations.

The CEO (or delegate) is able to conduct the investigation in any way he sees fit and this may vary depending on the nature of the alleged disclosable conduct. In general, the following principles apply:

- procedural fairness
 - confidentiality
 - determination of proof on the balance of probabilities – ie more likely than not the fact is true.
1. If a person is interviewed as part of the investigation of a disclosure, the interviewee will be informed of the following:
 - i. the identity and function of each individual conducting the interview
 - ii. the process of conducting an investigation
 - iii. the authority of the CEO (or delegate) under the Act to conduct the investigation
 - iv. the protections provided by section 57 of the PID Act
 - v. if the interview will be recorded.
 2. When an interview ends, the interviewee is given an opportunity to make a final statement or comment, or express a position. Any final statement, comment or position by an interviewee is included in the record of the interview.
 3. If a person suspects on reasonable grounds that information obtained through the disclosure or investigation of the disclosure suggests that an offence has been committed, and the offence is punishable by imprisonment for life or for a period of at least 2 years, the person must notify the responsible Australian police force.
 4. Investigations into disclosures must address whether there may be a breach of the APS Code of Conduct and whether, in the event of a breach, misconduct proceedings should be considered.

Investigation report

An investigation report must be completed within 90 days of the matter being allocated for investigation, unless an extension is granted by the Ombudsman pursuant to subsection 52(3) of the PID Act. If it is reasonably practicable to contact the discloser, they must be notified of any extension of time in which to complete the report and then provided with a copy of the report.

The report must set out:

- a) the matters considered by the investigation



- b) the duration of the investigation
- c) the findings of the investigation:
 - i. identify whether there have been any instances of disclosable conduct
 - ii. identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates
 - iii. explain the steps taken to gather evidence
 - iv. include a summary of the evidence and other matters considered in the investigation, as well as any findings and recommendations made based on that evidence
 - v. 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.

The Director, Corporate must also provide the Ombudsman with information about disclosures TEQSA has handled in accordance with section 15 of the Public Interest Disclosure Standard 2013.

Record keeping

The records must include details about how and when a public interest disclosure was made. If the disclosure was made orally, consideration should be given to asking the discloser to sign a record of the disclosure.

The records should be factual and free from unnecessary statements and personal opinion and include:

- a) a record of subsequent conversations where the disclosure is discussed
- b) a unique reference number allocated to each disclosure
- c) details of the reprisal risk assessment, allocation, the investigation, notifications to the discloser and others. These include, in particular:
 - i. A record of the decision to allocate the handling of the disclosure including the name of each agency to which the disclosure is allocated, the reasons for the decision and, where relevant, any consent provided by the agency to which a disclosure is allocated
 - ii. A record of the notification to the discloser of the decision on whether and how to allocate the disclosure including, where relevant, the reasons for not allocating the disclosure and any other courses of action that may be available to the discloser.
- d) any other records necessary to allow the Ombudsman to review the matter where required.

5. Review of process and outcome

Employees, and others, who are not satisfied with the review process or the outcome of an internal investigation may pursue a complaint with the Commonwealth Ombudsman. The Ombudsman may also investigate matters referred directly to the Ombudsman.

6. Questions

Questions on the policy should be directed to TEQSA's General Counsel.