

# WSA Policy Whistleblower

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	<b>Main Changes:</b> Updates to align with the <i>National Anti-Corruption Commission Act 2022</i> (Cth) and the <i>Public Interest Disclosure Amendment (Review) Act 2022</i> (Cth) and to prescribe PID procedures for facilitating and dealing with public interest disclosures relating to WSA.		

## Related Documents

This policy should be read in conjunction with the related documents listed in the table below.

Document Number:	Document Description:
WSA00-WSA-00000-HR-POL-000001	Code of Conduct Policy
WSA00-WSA-00000-CP-POL-000004	Statement of Business Ethics Policy
WSA00-WSA-00000-CP-POL-000007	Anti-Bribery and Corruption Policy
WSA00-WSA-00000-CP-POL-000008	Whistleblower Authorised Officer Details
WSA00-WSA-00000-RI-PRO-000002	Fraud and Corruption Control Plan Procedure

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## 1. What is this Policy about?

WSA is committed to achieving the highest levels of integrity, safety, sustainability and performance. Our Code of Conduct and Statement of Business Ethics set out the core values of WSA, the standards we expect of our people and our commitment to fostering a culture where honesty and ethical conduct is valued and demonstrated.

This Whistleblower Policy (Policy) complements and supports the WSA core values set out in the Code of Conduct and the Statement of Business Ethics. WSA recognises the importance of providing a safe, supportive and confidential environment, where people feel confident about reporting wrongdoing and are supported and protected throughout the process.

This document describes how eligible whistleblowers and disclosers can raise concerns regarding any illegal or improper conduct or serious wrongdoing without fear of retaliation, and how WSA will deal with reported matters, including the protections that may apply to whistleblowers and disclosers.

## 2. Introduction

### 2.1. To whom does this Policy apply?

This document applies to all past and current WSA directors, officers, employees, associates, suppliers of goods or services to WSA and their employees (including secondees, consultants, volunteers and contractors); and (only in relation to the Corporations Act 2001 (Cth)) their spouses, relatives, or dependants. Those persons (public officials) who are eligible to make a disclosure in accordance with the *Public Interest Disclosure Act 2013* (Cth) (**PID Act**) are set out in Annexure A of this document.

This Policy applies to the types of whistleblowing and disclosure set out at Section 3 of this document **below**. The various schemes have some important differences (including who is authorised to receive a disclosure for it to qualify for protection) as well as the sort of conduct that falls under each scheme.

If a disclosure cannot be dealt with under the PID Act, the NACC Act, or the legislation comprising the Whistleblower Protection Scheme, any concerns that are raised by employees will be handled in accordance with WSA's Complaints and Grievances Policy. For non-employees, WSA may allocate to the concern to the most appropriate officer within WSA to determine how the matter may be dealt with.

### 2.2. Policy review

This document is due for review every three years or earlier upon any relevant legislative change.

### 2.3. Policy availability

This policy is available to be accessed on the **WSA Published Documents SharePoint** site. Currency and accuracy cannot be guaranteed if sourced from other locations.

### 3. Schemes covered by this document

Whistleblowers and disclosers play an important role in exposing otherwise unknown acts of corruption or misconduct by reporting illegal or improper conduct, or an improper state of affairs or circumstances occurring within WSA or any related body corporate.

There are multiple schemes for whistleblowing and disclosures that apply to WSA and your disclosure may fall under one or multiple schemes. WSA will assist in determining which scheme or schemes apply and which procedure to follow.

The schemes provide avenues to report suspected wrongdoing as well as protections for such reporting. The schemes covered by this document are:

#### **The Public Interest Disclosure Scheme**

The PID Act provides a framework for public officials to disclose allegations of misconduct in the Commonwealth public sector.

#### **The National Anti-Corruption Commission**

The *National Anti-Corruption Commission Act 2022* (Cth) (**NACC Act**) establishes the National Anti-Corruption Commission which is established to prevent, detect, investigate and report on serious or systemic corruption in the Commonwealth public sector.

#### **The Whistleblower Protection Scheme**

The *Corporations Act 2001* (Cth) and the *Tax Administration Act 1953* (Cth) set out a scheme for employees and other people to make a disclosure (**Whistleblower Protection Scheme**).

## 4. Public Interest Disclosures

Section 4 of this document sets out the WSA's general policy for facilitating and dealing with internal public interest disclosures. WSA's CEO has established detailed procedures in writing for facilitating and dealing with PIDs relating to WSA for the purposes of section 59(3) of the PID Act.

The PID Act facilitates the disclosure and investigation of wrongdoing in the Commonwealth public sector. The PID Act also provides protections for public officials who make disclosures and for persons who provide assistance in disclosure investigations.

WSA will act on disclosures in accordance with its obligations under the PID Act and protect a person making a disclosure (a discloser) from any reprisals or threats of reprisals because they have made or are suspected to have made a disclosure.

### 4.1. What are public interest disclosures?

It is important to note that not all disclosures of information made to WSA will be a "public interest disclosure" for the purposes of the PID Act (**a PID**). A disclosure of information will only be a PID to which these procedures relate 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);<sup>1</sup>
- 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;<sup>2</sup> and
- the disclosure is made to an appropriate person.<sup>3</sup>

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

A disclosure may only be treated as a PID, and the discloser will only receive the benefit of the PID Act protections, if the above requirements are fulfilled. It is important to carefully review the contents of the PID Act and seek independent legal advice where appropriate before making a disclosure.

Summaries of the rights, protections and responsibilities of a discloser, a person who is the subject of a disclosure, officials and others involved in public interest disclosures are set out at **Annexures B, C, D and E** respectively.

Further guidance material on the Public Interest Disclosure Scheme is available on the [Commonwealth Ombudsman's website](#)

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<sup>1</sup> This includes a current or former employee or contracted service providers: see section 69 of the PID Act.

<sup>2</sup> What does and does not constitutes disclosable conduct is defined in sections 29-33 of the PID Act.

<sup>3</sup> 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 **Annexure A**.

## **4.2. Authorised officers**

An authorised officer is a public official who has been appointed by the principal officer to receive disclosures under the PID Act. The principal officer of WSA is the CEO.

The CEO has appointed the following "authorised officers" for the purposes of the PID Act:

- the WSA Chief Legal Officer;
- the WSA Chief People Officer; and
- the WSA Company Secretary.

The contact details for Authorised Officers can be found on the WSA intranet.

A person can make a PID to an authorised officer of WSA if the PID relates to WSA or if the discloser belongs, or last belonged to, WSA.

## **4.3. Disclosure to a supervisor**

If a public official discloses information to a supervisor and the supervisor has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, and the supervisor is not an authorised officer, 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 WSA
- 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 the PID 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 WSA as soon as reasonably practicable.

## **4.4. Protecting confidentiality**

The authorised officer and the principal officer will take all 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 a person who has made a public interest disclosure other than in accordance with the PID Act.

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 the same portfolio as WSA if the conduct relates to that agency or the disclosure is allocated to that agency.

#### 4.5. Interaction with the National Anti-Corruption Commission

The 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 WSA 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) (**PID officers**) must be aware of and consider the mandatory obligation under section 35 of the NACC Act.

Section 35 of the NACC Act provides that PID officers must refer a corruption issue to the NACC as soon as reasonably practicable upon becoming aware of a corruption issue that:

- concerns the conduct of a person who is or was a staff member of WSA; and
- the PID officer suspects could involve corrupt conduct that is serious or systemic.

A PID officer is not required to refer a corruption issue if they believe on reasonable grounds that the NACC is already aware of the issue.

If a PID officer becomes aware of such a corruption issue as a result of an internal disclosure 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, WSA should continue to deal with and 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.

#### 4.6. Reporting to 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.



## 5. National Anti-Corruption Commission

### 5.1. What information can be referred to the NACC?

Under the NACC Act, any person (including members of the public and public officials) can voluntarily refer information about a corruption issue to the NACC.

A corruption issue, for the purposes of the NACC Act, is an issue of whether (in the relevant circumstances) a person has, is or will engage in corrupt conduct.

Corrupt conduct is defined in section 8 of the NACC Act as meaning:

- a. any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly:
  - i. the honest or impartial performance of any public official's functions or duties as a public official; or
  - ii. the honest or impartial performance of any public official's functions or duties as a public official;
- b. any conduct of a public official that constitutes a breach of public trust;
- c. any conduct of a public official that constitutes, involves or is engaged in for the purpose of abuse of the person's office as a public official;
- d. any conduct of a public official, or former public official, that constitutes or involves the misuse of information or documents acquired in the person's capacity as a public official.

Corrupt conduct can be investigated by the Commissioner of the NACC even if it occurred prior to the commencement of the NACC Act, and even if the relevant public official is no longer a public official at the time the NACC Act commenced.

The NACC has jurisdiction to investigate **serious** or **systemic** corrupt conduct or corruption issues.

### 5.2. Referrals to the NACC

#### Direct referral or referral by agency head

Referral of a corruption issue or provision of information about a corruption issue can be made directly to the NACC or to the CEO (as the agency head of WSA) who has a mandatory obligation to refer that information to the NACC.

#### Referrals under the PID Act

Section 35 of the NACC Act contains mandatory referral obligations that apply to PID officers. WSA has established public interest disclosure procedures in writing setting out information on these referral obligations and the steps that must be taken where a PID officer referred a corruption issue to the NACC.

If a public interest disclosure is made to the NACC and the Commissioner decides not to investigate it, the Commissioner may refer it back to WSA for consideration or investigation.

### 5.3. NACC Investigations

Once the Commissioner becomes aware of a corruption issue, or a corruption issue is referred to the Commissioner, they can conduct a preliminary investigation to confirm the existence or nature of a corruption issue (including whether the issue involves corrupt conduct that is serious or systemic) or to decide whether or how to deal with a corruption issue (see section 42 of the NACC Act).

If the Commissioner is satisfied that the issue could involve corrupt conduct that is serious or systemic, the NACC can deal with the issue by:

- investigating the matter itself;
- investigating jointly with a Commonwealth, State or Territory entity;
- referring the issue back to WSA (ie the responsible agency) for internal investigation;
- referring the issue to a Commonwealth, State or Territory agency; or
- take no action.

The Commissioner has broad powers to investigate a corruption issue as they see fit, including in relation to which powers to use during an investigation including:

- issuing stop action directions;
- issuing directions to produce;
- issuing notices to produce;
- exercising search powers to enter any place occupied by WSA without a search warrant; and
- holding hearings (including issuing summons to attend hearings).

### 5.4. Protections afforded to disclosers under the NACC Act

Part 4 of the NACC Act provides protections for all persons who refer information/allegations or who produce evidence, information or documents concerning corruption issues to NACC (**NACC disclosure**).

#### Protection from liability

If a person makes a NACC disclosure they will not be subject to any civil, criminal or administrative liability (including disciplinary action) for making the NACC disclosure, and no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the NACC disclosure.

That person has absolute privilege in defamation proceedings and a contract cannot be terminated on the basis that NACC disclosure constitutes a breach of contract.

This does not apply where a person makes a statement that is knowingly false or misleading and does not apply in respect of a person's liability for their own conduct.

#### Protection from reprisals

Reprisal action, or the threat of reprisal action is prohibited under section 30 of the NACC Act, where the person taking the reprisal action believes or suspects that the other person, or any other person, may have made or proposes to make a NACC disclosure.

Reprisal action is where a person engages or threatens to engage in conduct that results in a detriment to another person. The relevant types of detriment include dismissal of an

employee, injury of an employee in their employment, alteration of an employee's position to their detriment, discrimination as compared to other employees, harassment or intimidation, harm or injury (including psychological injury, or damage to property or reputation.

Reprisal action is a criminal offence under the NACC Act with a penalty of up to 2 years imprisonment.

## **6. Whistleblower Protection Scheme**

WSA relies on its people and others to help maintain and advance its culture of honest and ethical behaviour. If you have reasonable grounds to suspect that WSA, a WSA director, officer, employee, contractor, supplier, tenderer or other person who has business dealings with WSA has engaged in disclosable conduct you are encouraged to report that conduct or raise your concerns in any of the ways that are set out in Section 7 below.

A report may damage the career prospects and reputation of people who are the subject of allegations. It is very important therefore that those who make a report under this Policy do so where reasonable grounds exist for suspecting the information is correct. WSA discourages reporting of conduct that is known to be false or is misleading or dishonest at the time that the report is made. WSA takes whistleblower claims seriously and will look unfavourably on any false reports or claims. Making a false report or claim may be considered a breach of the WSA Code of Conduct and disciplinary action may be taken by WSA against any person who makes a false claim, including termination of employment or engagement.

### **6.1. Disclosable matters under the Whistleblower Protection Scheme**

Information is a disclosable matter under the Whistleblower Protection Scheme if the Whistleblower has reasonable grounds to suspect that the information disclosed:

- concerns misconduct or an improper state of affairs or circumstances in relation to WSA or one of its related bodies corporate, (where the conduct does not necessarily need to be "unlawful" or a contravention of a particular law to fall within the scope of "misconduct or an improper state of affairs or circumstances")
- indicates that WSA, a related body corporate or any officers or employee has engaged in conduct that:
  - constitutes an offence against the Corporations Act or other specified financial services legislation;
  - an offence against other Commonwealth legislation that is punishable by imprisonment for 12 months or more;
  - represents a danger to the public or the financial system, or
  - is prescribed by regulation.

The misconduct or an improper state of affairs or circumstances can be in respect of tax affairs.

Some examples of disclosable matters include: illegal activities (eg, theft, drug sales or use, violence, criminal damage to property), fraud, unlawful, corrupt or irregular use of company funds or company practices, financial irregularities, offering or accepting a bribe and harassment, bullying or discrimination.

A disclosable matter also includes any conduct which comprises retaliation against any person who raises concerns of actual or suspected disclosable matters under this Policy or against anyone who helps address a concern raised.

## **6.2. Eligible whistleblowers**

Under the Whistleblower Protection Scheme, an "eligible whistleblower" is either:

- a current or former officer of WSA;
- a current or former employee of WSA;
- a person who supplies goods or services to WSA and current or former employees of those suppliers;
- an individual associate of WSA; or
- either:
  - in relation to the Corporations Act, a relative, dependant or spouse of a dependant of any of the above individuals; or
  - in relation to the Tax Administration Act, a spouse, child, dependant, or spouse of a dependant of any of the above individuals, (a Whistleblower).

## **6.3. Recipients of disclosures under the Whistleblower Protection Scheme**

The role of WSA's "eligible recipients" is to receive disclosures that qualify for protection. A disclosure must be made to an "eligible recipient" in order to qualify for protection under the Whistleblower Protection Scheme.

In the first instance, WSA encourages you to make a disclosure to our Authorised Officers (appointed under the PID Act - refer to Section 4) as that will allow us to address potential wrongdoing as early as possible.

Under the **Whistleblower Protection Scheme** you may make a disclosure to any of the following "eligible recipients":

- Authorised Officers (being persons authorised by WSA to accept disclosures under the PID Act);
- a senior manager or officer of WSA or a related body corporate (being the directors, company secretary or members of the WSA Executive Committee);
- an actuary or auditor of WSA or a related body corporate;
- a registered tax agent or officer who has functions or duties that relate to WSA's tax affairs;
- your lawyer; and
- KPMG FairCall (see below).

## **6.4. Making a Report**

WSA has multiple channels available for a person who believes disclosable conduct has occurred, or will occur, and who wishes to report that matter. There is no requirement for disclosures to be made in a particular manner or form.

Reports should disclose the grounds for the report and provide full disclosure of all relevant details and any supporting documentation that may be relevant.

WSA encourages you to make a disclosure to an Authorised Officer. This is however not mandatory and WSA accepts that disclosures can be made to various individuals and entities.

Nothing in this Policy or any other WSA document prevents you from making a disclosure that will qualify for protection externally to ASIC, APRA, the Commonwealth Ombudsman, the Commissioner of Taxation, the National Anti-Corruption Commission or other Commonwealth body as prescribed by regulation (depending on the scheme that applies to the disclosure), or from talking to an independent lawyer to get legal advice.

Disclosures to a legal practitioner for the purpose obtaining legal advice or representation in relation to the operation of the whistleblower provisions in the Corporations Act are protected (even in the event that the legal practitioner concludes that a disclosure does not relate to disclosable conduct). Lawyers employed by WSA can only act for WSA and cannot provide you with legal advice.

### **Anonymous Disclosures**

A Whistleblower can choose to make a report anonymously and still be protected. You can choose to remain anonymous over the course of an investigation and once it is finalised.

You can adopt a pseudonym for the purpose of your disclosure and/or refuse to answer questions that you feel could reveal your identity at any time.

If you do make a disclosure anonymously, WSA ask that you maintain communication with the recipient of your disclosure so that WSA can obtain additional information as required to investigate the matter. WSA may not be able to undertake an investigation if it is not able to contact you.

Once you make a report you must keep the matter confidential and assist the investigation.

WSA also confirms that a Whistleblower who discloses their identity while making a protected disclosure will be afforded confidentiality protections as set out in Section 6.6 below.

### **Authorised Officers**

WSA has appointed a number of Authorised Officers under the PID Act who are authorised to receive disclosures under the Whistleblower Protection Scheme, being:

- the WSA Chief Legal Officer;
- the WSA Chief People Officer; and
- the WSA Company Secretary.

The contact details for Authorised Officers can be found on the WSA intranet.

The Authorised Officer receiving the disclosure under the Whistleblower Protection Scheme will make an initial assessment and refer the disclosure as appropriate to the Disclosure Committee for investigation (other than when the disclosure is considered to be a disclosure under the PID Act).

### **External Reporting**

Alternatively, a report may be made via the WSA **FairCall Service** which is a free external hotline and reporting service independently monitored by KPMG.

You can contact the FairCall service in the following ways:

Telephone: 1800 764 346  
Email: [FairCall@kpmg.com.au](mailto:FairCall@kpmg.com.au)  
Web: [WSA - Home \(kpmg.com.au\)](https://www.wsa.com.au)  
Post: **The FairCall Manager | KPMG Forensic**  
PO Box H67  
Australia Square | Sydney NSW 1213

The FairCall operator will provide the details of the report to the Chief Legal Officer in the first instance. Where you provide details of your identity to FairCall those details will only be provided to an appointed investigator with your consent. A report may be submitted anonymously if you do not wish to disclose your identity to FairCall.

### **Disclosures to Regulator**

The protections under the Whistleblower Protection Scheme will also apply if you make a qualifying disclosure directly to ASIC, APRA, the Commissioner of Taxation or a prescribed Commonwealth authority. ASIC and APRA have issued information sheets or guides on whistleblowers' rights and protections, which are available on the internet.

- [Whistleblower rights and protections | ASIC](#) and
- [Become a 'whistleblower' or make a public interest disclosure | APRA](#)

### **Emergency or Public Interest Disclosures**

Under the Whistleblower Protection Scheme, an emergency disclosure or 'public interest disclosure' may be made to journalists and members of parliament and qualify for protection but only if the Whistleblower complies with a number of strict requirements.

It is important to understand the criteria for making a public interest or emergency disclosure under the Whistleblower Protection Scheme. A disclosure must have previously been made to ASIC, APRA or other prescribed body and written notice provided to that body to which the disclosure was made.

In the case of a public interest disclosure, at least 90 days must have passed since the previous disclosure and the Whistleblower must not have reasonable grounds to believe that action is being taken or has been taken.

You should contact an independent legal adviser before making such a disclosure.

## **6.5. Investigating Disclosable Conduct**

### **How WSA will handle and investigate disclosures**

WSA takes all protected disclosures seriously and where appropriate will investigate protected disclosures that are reported to an eligible recipient. All investigations will be conducted fairly.

Once the Authorised Officer assesses the disclosure and decides whether a protection scheme or schemes apply, the Authorised Officer will, within 48 hours, refer the matter to the Disclosure Committee.

In referring matters to the Disclosure Committee, the Authorised Officer will have regard to the confidentiality obligations below.

The Disclosure Committee consists of the CEO, Chief Legal Officer, Chief People Officer and the Company Secretary. If considered appropriate the Disclosure Committee will

appoint a member of the Disclosure Committee or other appropriately qualified person to investigate and decide on the response to disclosures made under this Policy (the Whistleblower Investigation Officer) (the **WIO**).

The WIO will also assess the risk of detriment against the Whistleblower and take reasonable action to protect the Whistleblower from risk of detriment.

The WIO will then implement strategies to control the risk, and will re-evaluate the risk as required.

The WIO will carry out the disclosure investigation in a timely manner, having regard to the nature of the disclosure, and will provide the Whistleblower with regular updates as and when appropriate (if they can be contacted, including through anonymous channels).

In some circumstances, WSA may not be able to commence or progress an investigation into a protected disclosure because, for example, the disclosure was made anonymously and did not provide any contact details to allow WSA to obtain more information; or WSA cannot proceed with an investigation without disclosing the Whistleblower's identity and the Whistleblower does not consent to such a disclosure.

If an investigation has been carried out under this Policy, the WIO will confidentially report all disclosure investigations to the Audit and Risk Committee (**ARC**).

The Disclosure Committee may, if it deems it necessary, engage external independent advisers to conduct or assist with an investigation. Matters which may relate to potential criminal conduct may be referred to the police. The referral of a protected disclosure for investigation will be done in accordance with the confidentiality obligations that WSA owe to the Whistleblower.

At the conclusion of an investigation, where appropriate, a report will be prepared by the Disclosure Committee (led by the WIO) which will be provided to the ARC at the next scheduled meeting.

### **Confidentiality**

For the purposes of ensuring the integrity of any investigation, Whistleblowers may be requested to keep confidential the fact that a report has been made (subject to any legal requirements).

### **Whistleblower Feedback**

The Whistleblower will be kept informed of the progress and outcomes of any investigations being undertaken, if they can be contacted, and subject to confidentiality and privacy considerations. In some instances confidentiality issues may prevent the WIO from providing specific details about the investigation or any disciplinary outcomes.

### **Fair Treatment of Employees**

Where a WSA employee is the subject of a disclosure or a disclosure otherwise mentions a WSA employee, WSA will take all reasonable and practicable steps to ensure that the employee is treated fairly, as appropriate in the circumstances of each disclosure.

When an investigation needs to be undertaken, the process will be objective, fair and independent.

### **Reports Concerning the Disclosure Committee**

Any concerns about the CEO, Chief Legal Officer, or Chief People Officer should (but does not have to) be directed to the WSA FairCall Service. The WSA FairCall Service will refer the matter to the Chair of the Board Audit and Risk Committee (ARC).

In the event that the disclosure relating to or involving the conduct of a member of the Disclosure Committee is made to a Recipient, the Recipient will refer the matter directly to the Chair of the Board Audit and Risk Committee (ARC).

The Chair of the ARC will be the Whistleblower Investigation Officer in respect of any such disclosure.

## **6.6. Whistleblower Protections and Support**

### **Protection of Identity and Confidentiality**

For disclosures made under this Policy, information from Whistleblowers must be kept confidential except as required or allowed by law, or where disclosure is necessary to regulatory authorities, law enforcement agencies or professional advisers.

WSA cannot disclose the identity or information that may lead to the identification of the Whistleblower unless WSA is authorised to do so under the Whistleblower Protection Scheme.

Subject to compliance with any legal requirements, upon receiving a report under this Policy WSA will not, nor will any manager, supervisor or WIO, disclose any details that would suggest or reveal the Whistleblower's identity unless the Whistleblower consents to this disclosure or WSA is otherwise authorised to make the disclosure. Any such disclosure will be made strictly on a confidential basis only.

In some circumstances, WSA may request a Whistleblower's consent to disclose their identity in order to appropriately progress the investigation of the matters they have disclosed. A Whistleblower is under no obligation to provide their consent but are encouraged by WSA to do so as it will assist investigations and proper action being taken. A Whistleblower may also authorise WSA to disclose their identity to only a small number of people on a restricted basis.

As WSA is a Commonwealth owned corporation, it may be required to report information concerning disclosures to the responsible Minister for WSA within the Australian Government, an officer of the Department of the Australian Government responsible for WSA, or to a Committee of the Australian Parliament, in accordance with WSA's obligations.

WSA will comply with its obligations under privacy laws with respect to any reporting of information required to the Australian Government or Parliament.

If you have a complaint about a breach of confidentiality, you may raise it with the **Chief Legal Officer or with ASIC, APRA or the ATO**.

### **Protection from Detrimental Acts or Omissions**

If you make a report in accordance with this Policy, you will not be victimised, discriminated against or disadvantaged in your employment or engagement with WSA, even if the report is subsequently determined to be incorrect or not substantiated, so long as you have not knowingly provided information that is false, misleading or dishonest.

It is unlawful for a person to:

- engage in any conduct that causes any detriment; or
- make a threat to cause any detriment,

to a Whistleblower or another person because the person engaging in the conduct believes or suspects that the other person or a third person made, may have made, proposes to make, or could make, a protected disclosure.



WSA will take all reasonable steps to protect a Whistleblower from any actual or threatened conduct that could cause a detriment because the Whistleblower made (or may make) a disclosure and will take action it considers appropriate where such conduct is identified.

Detrimental conduct includes:

- dismissal of an employee or injury in their employment;
- alteration of an employee's position or duties to their disadvantage;
- harassment or intimidation of a person;
- harm or injury to a person, including psychological harm; and
- damage to a person's property, reputation or financial position.

Detrimental conduct does not include:

- action that is reasonable for the purposes of protecting a Whistleblower from detriment; or
- managing a Whistleblower's unsatisfactory work performance in line with WSA's performance management framework.

A Whistleblower should inform the person they made the disclosure to if they become aware of any detrimental act or omission, threats or reprisal action in relation to a disclosure. If any of the above circumstances apply to you, you should seek independent legal advice.

All current employees of WSA have access to WSA's Employee Assistance Program, which is available on the WSA intranet.

### **Compensation and Other Remedies**

A Whistleblower (or any other employee or person) can seek compensation and other remedies through the courts if:

- they suffer loss, damage or injury because of a disclosure; and
- WSA failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.

You are encouraged to seek independent legal advice about what remedies may be available to you if you suffer loss, damage, or injury.

### **Support for Whistleblowers**

WSA is committed to ensuring that all personnel are supported. Where a protected disclosure is made, WSA will reiterate the requirements of this Policy and the Whistleblower Protection Scheme.

Whistleblowers have access to WSA's Employee Assistance Program, which is available on the WSA intranet.

### **Records or Documents**

Any records or documents created in relation to a matter reported will be kept confidential, to the extent possible, and retained under strict security.

## Statutory Protections

Whistleblowers who make a qualifying protected disclosure are protected from the following in relation to their disclosure:

- civil liability;
- criminal liability; and
- administrative liability.

It is important to note that a Whistleblower does not get legal immunity from prosecution for their own misconduct revealed as part of the disclosure.

The protections apply not only to internal disclosures but to disclosures to legal practitioners, regulatory and other external bodies, and public interest and emergency disclosures that are made in accordance with the Corporations Act. The maximum civil penalties (for breaching the confidentiality of an eligible whistleblower's identity or causing or threatening detriment) are as follows:

- for individuals, the greater of up to \$1.05 million (5,000 penalty units) or three times the value of the benefit derived or detriment avoided because of the contravention; and
- for companies, the greater of \$10.5 million (50,000 penalty units), or 10% of the annual turnover (up to \$525 million or 5 million penalty units), or three times the value of the benefit derived or detriment avoided because of the contravention.

Disclosures that are not about a 'disclosable matter' do not qualify for protection under the Corporations Act (or Tax Administration Act, where relevant). Such disclosures may be protected under other legislation, such as the *Fair Work Act 2009*.

The Chief Legal Officer can provide further information about these statutory protections.

## **7. Work related grievances**

Whistleblowing and Public Interest Disclosure Schemes are not about dealing with a personal work-related grievance. It is about reporting incidences of genuine or perceived illegal or improper conduct or wrongdoing. Disclosures relating only to personal work-related grievances do not qualify for protection.

Any concerns that do not relate to disclosable conduct under this Policy and Procedures can be raised through the Complaints and Grievance Policy. Concerns that concern only personal work-related grievances may be allocated to People & Culture to be dealt with. You can seek guidance from the Chief People Officer about personal work-related grievances.

Generally, a personal work-related grievance will include:

- an interpersonal conflict with another employee;
- a decision about your employment, transfer, or promotion;
- a decision about the terms and conditions of your employment such as a salary review of bonus outcomes; and
- a decision to suspend or terminate your employment or otherwise discipline you.

You may still be able to access the relevant protections if the disclosure is a mixed report that includes information about misconduct or breaches of employment law, or you have suffered from or are threatened with detriment for making a disclosure.

You can also access the relevant protections if you make a report to your lawyer or seek legal advice or representation about the operation of the whistleblower protections under the Corporations Act.

## **8. Further Information**

In addition to compliance with this Policy, further information and obligations are contained within other WSA Policies and Procedures.

Any employee who requires assistance in understanding this Policy should first consult their leader. Should further information be required, please contact the Chief Legal Officer or Company Secretary.

It is a condition of any employment with WSA that all employees comply with this Policy at all times. However, this Policy does not form part of any employee's contract of employment with WSA.

Breach of this Policy by an employee of WSA may be regarded as misconduct and may lead to disciplinary action up to and including termination of employment.

## Annexure A to the Whistleblower Policy

### 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 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](http://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.

## Annexure B to the Whistleblower Policy

### Rights, protections and responsibilities of disclosers

#### Rights and protections

A discloser has right to the protections set out in the PID Act, including:

- protection from the unauthorised disclosure of their identity;
- protection from reprisal;
- protection from civil, criminal and administration liability for making a public interest disclosure (noting that the making of a disclosure does not protect the discloser from the consequences of their own wrongdoing, including where they have been involved in the misconduct that they are reporting).

The authorised officer and principal officer will take reasonable steps to protect the discloser against reprisal.

The taking of reprisal action against a discloser is an offence under the PID Act and can lead to imprisonment or the imposition of penalties.

If a discloser believes they are suffering or have been threatened with reprisal, they may apply to Court for an injunction, or for compensation for loss, damage or injury suffered from a reprisal.

During the PID Act process, a discloser will be:

- advised of the following:
  - any decision that a disclosure is not a disclosure within the meaning of the PID Act;
  - the allocation of their disclosure;
  - the decision of WSA to investigate their disclosure;
  - the estimated duration of the investigation into their disclosure;
  - if WSA decides not to investigate their disclosure, the reasons for that decision and any action that may 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; and
  - the outcome of the investigation (including provision of a copy of the investigation report except to the extent that it 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).
- given support in accordance with paragraph 3.6 of the procedures.
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

### Responsibilities

A discloser must:

- have regard to WSA's advice with respect to the making of disclosures;
- comply with the PID Act requirements and the procedures set out in this document when making a PID;
- use their best endeavours to assist the principal officer of an agency in the conduct of an investigation;
- use their best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act.
- use their best endeavours to assist the IGIS in the performance of IGIS's functions under the PID Act.
- report to the authorised officer any detriment the discloser believes they have been subjected to as a result of making the disclosure; and
- cooperate with actions proposed by the authorised officer to protect the discloser from reprisals or the threat of reprisals or address work health and safety risks. In particular, although a discloser will be consulted regarding any actions proposed to be taken, such actions may be taken without the consent of the discloser.

### Advice to disclosers

When making a disclosure, a discloser should be clear and factual, and avoid speculation, personal attacks and emotive language, which can divert attention from the real issues in their disclosure.

When making a disclosure, disclosers should consider providing the following information:

- their name and contact details (if they wish)
- the nature of the suspected wrongdoing
- who they believe committed the suspected wrongdoing
- when and where the suspected wrongdoing occurred
- how they became aware of the suspected wrongdoing
- whether the suspected wrongdoing has been reported to anyone else
- if so, what that person has done to fix, stop or prevent it
- whether they are concerned about possible reprisal as a result of making a disclosure.

Disclosers should not investigate a matter themselves before making their disclosure.

The sooner a discloser raises a concern, the easier it is likely to be for the agency to take action.

## **Annexure C to the Whistleblower Policy**

### **Rights, responsibilities and protections of persons who are the subject of a PID**

#### Rights

A WSA employee who is the subject of a disclosure will be:

- given support in accordance with paragraph 3.7 of the procedures;
- afforded procedural fairness; and
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

#### Responsibilities

A WSA employee who is the subject of a disclosure must:

- use their best endeavours to assist the principal officer of any agency in the conduct of an investigation;
- use their best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act.
- use their best endeavours to assist the IGIS in the performance of IGIS's functions under the PID Act.
- comply with action taken by WSA to address risks or concerns in relation to the PID.

An employee who is the subject of a disclosure should also be aware that:

- the outcome of an investigation under the procedures set out in this document may result in another, different investigation (for example, a Code of Conduct investigation) taking place; and
- WSA may decide to take action in relation to the employee, for example temporarily transferring the employee to another work area without the employee's consent, in order to discharge its obligations including under the PID Act and work health and safety legislation.

## **Annexure D to the Whistleblower Policy**

### **Obligations and protections for officials under the PID Act**

#### Additional obligations of the Principal Officer

The principal officer must:

- ensure that the number of authorised officers in WSA is sufficient to ensure that they are readily accessible by public officials who belong to WSA and that public officials are aware of the identity of the authorised officers;
- take reasonable steps to encourage and support public officials who make or are considering making PIDs, and persons who provide or are considering providing assistance in relation to PIDs;
- establish PID Procedures consistent with the PID Act and PID Standard;
- as soon as reasonably practicable, ensure that appropriate action in relation to the agency is taken in response to any recommendations in a PID report;
- take reasonable steps to provide ongoing training and education to public officials about the PID Act;
- ensure that officials who are appointed to perform functions and duties or exercise powers under the PID Act are given appropriate training and education within a reasonable time after their appointment;
- take reasonable steps to protect public officials who belong to WSA against reprisals that have been, or may be taken in relation to PIDs that have been made, may have been made, are proposed to be made or could be made to an authorised officer or supervisor.

#### Additional obligations of authorised officers

An authorised officer must

- if an individual discloses, or proposes to disclose information to an authorised officer of WSA, and the authorised officer has reasonable grounds to believe that the information concerns or could concern disclosable conduct and the individual may be unaware of the consequences of making the disclosure:
  - inform the individual that the disclosure could be treated as an internal disclosure for the purposes of the PID Act;
  - explain what the PID Act requires for the disclosure to be an internal disclosure; and
  - advise the individual of the circumstances in which a PID must be referred to an agency or other person or body under another law of the Commonwealth;
  - advise the individual of any orders or directions of which the authorised officer is aware that are designated publication restrictions that may affect disclosure of the information; and
- take reasonable steps to protect public officials who belong to WSA against reprisals that have been, or may be taken in relation to PIDs that the authorised officer suspects on reasonable grounds have been made, may have been made, are proposed to be made or could be made, to them

#### Additional obligations of supervisors

The obligations of supervisors is set out in the policy.

#### Protection from liability

A person who is the principal officer, a delegate of the principal officer, an authorised officers, a supervisor of a person who makes a disclosure or a person assisting the principal officer (or delegate) is not liable to any criminal or civil proceedings, or any disciplinary action, for or in relation to any act or matter done or omitted to be done, in good faith:

- the performance or purported performance or any functions conferred on the person by the PID Act;
- the exercise, or purported exercise, or any power conferred on the person by the PID Act;
- in the case of a person assisting a principal officer or delegate, in assisting the principal officer or delegate in doing anything mentioned above.

## **Annexure E to the Whistleblower Policy**

### **Rights, responsibilities and protections of other persons**

#### Responsibilities of public officials

Under section 61 of the PID Act, public officials must use their best endeavours to:

- assist the principal officer in the conduct of an investigation under the PID Act.
- assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act.
- assist the IGIS in the performance of IGIS's functions under the PID Act.
- assist any other public official to exercise a right, or performance any duty or function, under the PID Act.

#### Immunities from liability for witnesses

A witness (other than a discloser) will not be subject to any civil, criminal or administrative liability because they give information or produce a document or other thing, or answer a question, that the witness considers on reasonable grounds to be relevant to:

- the making of a decision in relation to the allocation of a disclosure under section 43 of the PID Act;
- a disclosure investigation or a proposed disclosure investigation; or
- a review or proposed review by the Ombudsman or IGIS under section 55(3) of the PID Act about the handling of a disclosure.

This immunity does not apply to any liability of the witness for:

- making false or misleading statements;
- contravening a designated publication restriction;
- particular offences under the Criminal Code;
- their own conduct (the immunity only relates to the act of providing assistance in relation to the public interest disclosure).