



 APRA

# PUBLIC INTEREST DISCLOSURE

POLICY

SEPTEMBER 2022

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# Policy

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<b>Name</b>	Public Interest Disclosure Policy
<b>Approval date</b>	20 September 2022
<b>Purpose</b>	This document sets out APRA's policy for the handling of public interest disclosures made by public officials about suspected wrongdoing relating to APRA, including protection against reprisal for any persons who make such a disclosure.
<b>Related documents</b>	Public Interest Disclosure Act 2013 Public Interest Disclosure Standard 2013 Commonwealth Ombudsman's Guide to Making a Disclosure APRA Code of Conduct APRA Fraud Control Policy and Procedures APRA Professional and Ethical Behaviour Policy APRA Grievance Handling Policy

# Introduction

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This document is made under section 59 of the *Public Interest Disclosure Act 2013* (**PID Act**).

APRA encourages and supports the reporting of wrongdoing by current and former public officials in accordance with the PID Act and will actively support and protect persons who make such disclosures. In dealing with public interest disclosures (**PIDs**) in accordance with this policy, APRA seeks to ensure that the highest standards of ethical and accountable conduct are maintained within APRA.

# Overview of PIDs

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## What is a PID?

All Australian government agencies, Commonwealth companies and public authorities have responsibilities under the PID Act to investigate suspected wrongdoing and take appropriate action.

This document focusses on internal PIDs relating to one or more instances of suspected wrongdoing concerning APRA under the PID Act. A PID can be made about conduct that occurred at any time, including before the PID Act commenced<sup>1</sup>.

An internal PID must meet the following relevant requirements:

1. the disclosure must be made by a person (the **discloser**) who is, or has been, a public official (please refer to the section of this document titled '*Who can make a PID?*' for further details);
2. the information disclosed must tend to show, or the discloser must believe on reasonable grounds that the information tends to show, one or more instances of disclosable conduct<sup>2</sup> (please refer to the section of this document titled '*What is disclosable conduct?*' for further details); and
3. the person receiving the disclosure must be an authorised officer of APRA (**Authorised Officer**), an authorised officer of another relevant agency or a supervisor of the discloser (please refer to the sections of this document titled 'How to make a PID' and '*Authorised Officers*' for further details).

An allegation can also be a PID if it is made by a discloser in conjunction with a PID and it is an allegation that the information disclosed concerns disclosable conduct<sup>3</sup>.

A discloser may also make the following kinds of disclosures, provided that certain requirements are met:

- an external or emergency disclosure (in certain limited circumstances); and/or
- a disclosure to an Australian legal practitioner for the purposes of obtaining legal advice, or professional assistance, in relation to a PID.

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<sup>1</sup> Section 29 of the PID Act.

<sup>2</sup> Item 1 of section 26(1) of the PID Act.

<sup>3</sup> Section 27 of the PID Act.

It is important to note that if all of the relevant requirements of a PID are not met, the discloser may not have the benefit of certain protections afforded under the PID Act.

## What is disclosable conduct?

Disclosable conduct includes, but is not limited to<sup>4</sup>, conduct engaged in by an agency (such as APRA), a public official or a contracted service provider for a Commonwealth contract (including a service provider contracted to APRA) which:

- contravenes a Commonwealth, State or Territory law;
- perverts, attempts to pervert or is engaged in for the purpose of perverting the course of justice;
- involves, or is engaged in for the purposes of, corruption;
- constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent;
- is an abuse of public trust;
- results in the wastage of money or property of APRA;
- unreasonably results in a danger, or increases a risk of danger, to the health or safety of one or more persons; or
- results in a danger, or increases a risk of danger, to the environment<sup>5</sup>.

Disclosable conduct also includes conduct engaged in by a public official that involves, or is engaged in for the purpose of, the abuse of their position as such and conduct that could, if proved, give reasonable grounds for disciplinary action against the public official.

It does not matter if the agency, public official or contracted service provider who engaged in the disclosable conduct has ceased to exist or to be a public official or a contracted service provider (as applicable) after the conduct occurred.

Conduct will not be disclosable conduct if it relates only to a person's disagreement with an APRA policy or proposed APRA policy, or relates only to amounts, purposes or priorities of expenditure or proposed expenditure relating to such a policy<sup>6</sup>.

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<sup>4</sup> The full definition of disclosable conduct is set out in section 29 of the PID Act. That definition applies for the purposes of this document.

<sup>5</sup> Section 29(1) of the PID Act.

<sup>6</sup> Section 31(a) and 31(c) of the PID Act.

## Who can make a PID?

A PID can be made by any current or former public official, including:

- APRA employees (this includes temporary or contract employees); and
- service providers contracted to APRA (or their officers and employees)<sup>7</sup>.

An authorised officer of an agency may also deem a person to be a public official if they believe on reasonable grounds that the person has information that concerns disclosable conduct, the person has disclosed or proposes to disclose the information to the authorised officer, and the person was not a public official when they obtained the relevant information<sup>8</sup>. Such a determination may be made by the authorised officer of an agency upon receipt of a request from the relevant person, or by the authorised officer on their own initiative. For more information about APRA's Authorised Officers, please refer to the section of this document titled '*Authorised Officers*'.

## Protections

A person who makes a PID is afforded certain protections under the PID Act<sup>9</sup>. For example:

- an individual is not subject to any civil, criminal or administrative liability for making a PID (subject to certain exceptions, such as where an individual knowingly makes a statement that is false or misleading);
- it is an offence to use or disclose information which is likely to enable the identification of an individual who makes a PID (again, subject to certain exceptions, such as where the disclosure is required for the purposes of the PID Act); and
- it is an offence to take, or to threaten to take, a reprisal against a person because of a suspected, proposed or actual PID, with certain courts having the ability to make orders (including for compensation, injunctions and reinstatement of employment) if a reprisal is taken against a person in such circumstances.

In addition, the principal officer of APRA is required under the PID Act to take reasonable steps to protect all public officials who belong to APRA from detriment, or threats of detriment, relating to PIDs made by those persons<sup>10</sup>. For more information about the principal officer of APRA, please refer to the section of this document titled '*Principal Officer*'.

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<sup>7</sup> Section 69(1) of the PID Act.

<sup>8</sup> Section 70 of the PID Act.

<sup>9</sup> Sections 9, 11, 11A, 12, 19 and 20 of the PID Act.

<sup>10</sup> Section 59(3)(a) of the PID Act.



The PID Act also provides protections for any person who provides relevant information when requested to do so by a person conducting a PID investigation (**Investigator**). More specifically, such a person (which may include the discloser) is:

- not subject to any criminal or civil liability because they give information, produce a document or answer a question (whether voluntarily or otherwise) when requested to do so by the investigator and the information, document or answer is relevant to the investigation (subject to certain exceptions); and
- also protected against reprisal<sup>11</sup>.

APRA is committed to safeguarding the interests of, and to protecting, public officials who make a PID, and will make every reasonable effort to protect the identity of such persons. APRA will also make every reasonable effort to protect disclosers and any APRA staff members who may be impacted by a PID from any threatened or actual reprisals.

However, it is important to note that the classification of an individual's disclosure of their own conduct as a PID does not affect their liability for the conduct<sup>12</sup> and that a person who knowingly makes a false or misleading disclosure will not be afforded certain protections under the PID Act. Therefore, the making of a PID does not prevent managers from addressing a discloser's unsatisfactory performance in the workplace nor from the consequences of their own improper conduct if they are implicated in the wrongdoing they have reported.

APRA staff members who have made a PID are encouraged to raise any reprisal to which they believe they are, or may be, subject.

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<sup>11</sup> Section 13 of the PID Act.

<sup>12</sup> Section 12 of the PID Act.

# How to make a PID

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## Overview

A PID must be made by a current or former public official to an authorised recipient (being one of APRA's Authorised Officers, an authorised officer of another relevant agency or a supervisor of the discloser). A PID can be made either orally or in writing. A discloser need not assert that the disclosure is made for the purposes of the PID Act.

APRA prefers that a PID relating to APRA is made to one of its Authorised Officers by way of email to [PID@apra.gov.au](mailto:PID@apra.gov.au).

For further information concerning APRA's Authorised Officers, please refer to the section of this document titled '*Roles and Responsibilities*'.

## Information to be provided

To assist in determining how to proceed with respect to a disclosure about suspected wrongdoing, a discloser may wish to provide information such as the following:

- their name and contact details (noting that a discloser may choose to remain anonymous);
- the nature of the suspected wrongdoing;
- who they believe committed the suspected wrongdoing;
- when and where the suspected wrongdoing occurred or is believed to have occurred;
- how they became aware of the suspected wrongdoing;
- whether the suspected wrongdoing has been reported to anyone else and if so, the measures taken by that person in respect of the suspected wrongdoing;
- whether they are concerned about any actual or possible reprisal as a result of making a disclosure; and
- any supporting correspondence or other documentation (e.g. files notes, diary of events, witnesses etc.) that may be able to verify the information being disclosed.

The disclosure about suspected wrongdoing should be clear and factual and should avoid any speculation, personal attacks or emotive language.

A discloser should raise their concerns to an authorised recipient as soon as practicable to enable APRA to take action and should not investigate a matter themselves before making a disclosure, as this may hinder a future investigation.

## Anonymous disclosures

A discloser may choose to remain anonymous<sup>13</sup>, including by using a pseudonym.

Anonymous disclosures will be acted upon whenever possible. However, it should be noted that there are reasons why a discloser might consider identifying themselves to an Authorised Officer or other authorised recipient, or at the very least providing a means of contact. For example, it may be difficult to:

- implement appropriate protections against reprisal if the discloser's identity is unknown;
- conduct an investigation if the discloser cannot be contacted for further information; and
- update the discloser on the progress of the matter, including the outcome of the investigation, if the discloser does not provide a means of contact.

A person who has made an anonymous disclosure may come forward at a later stage to disclose their identity.

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<sup>13</sup> Section 28(2) of the PID Act.

# Roles and responsibilities

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## Principal Officer

APRA's Chair, as the principal officer of APRA under the PID Act (the **Principal Officer**), has specific responsibilities under the PID Act.<sup>14</sup> For example, the Principal Officer is responsible for:

- establishing procedures for facilitating and dealing with PIDs relating to APRA and ensuring that those procedures address certain matters (such as providing for confidentiality of investigative processes) and comply with certain standards;
- appointing authorised officers and taking reasonable steps to ensure that:
  - the number of authorised officers is sufficient to ensure that they are readily accessible by public officials who belong to APRA;
  - public officials who belong to APRA are aware of the identity of each authorised officer; and
  - APRA provides an effective means for potential disclosers to find out how to contact authorised officers;
- taking reasonable steps to protect public officials who belong to APRA from detriment, or threats of detriment, relating to PIDs made by those persons; and
- ensuring that appropriate action is taken in response to recommendations in a report concerning a PID investigation, or any other matters raised in such a report, that relate to APRA.

The Principal Officer can delegate any or all of their functions or powers under the PID Act to a public official who belongs to APRA.

## Authorised Officers

Authorised Officers are appointed to accept PIDs about APRA, and are responsible for receiving, assessing, and allocating disclosures<sup>15</sup>. Authorised Officers may receive PIDs directly from a discloser or through a manager/supervisor.

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<sup>14</sup> Section 59 of the PID Act.

<sup>15</sup> Column 2 of item 1 of the table set out in section 26(1) of the PID Act; Division 1 of Part 3 of the PID Act.

Authorised Officers are also responsible for advising disclosers of relevant matters under the PID Act, including informing the discloser that the disclosure could be treated as an internal disclosure for the purposes of the PID Act, explaining what the PID Act requires in order for the disclosure to be an internal disclosure and advising the discloser if they are aware of certain restrictions which may affect disclosure of the information<sup>16</sup>.

If the Authorised Officer has explained to the discloser what the PID Act requires in order for the disclosure to be an internal disclosure and, subsequently, concludes on reasonable grounds that there is no reasonable basis on which the disclosure could be considered to be an internal disclosure, they must inform the discloser of:

- the reasons why they have come to that conclusion and have therefore not allocated the disclosure to an agency; and
- any other options that might be available to them under Commonwealth law<sup>17</sup>.

If contacting the discloser is not reasonably practicable, the Authorised Officer should make a record of their decision and the reasons for it and explain why contacting the discloser was not reasonably practicable<sup>18</sup>.

At present, the following persons are Authorised Officers of APRA:

- APRA's Chair;
- APRA members;
- the Chief Operating Officer, Enterprise Services;
- Executive Directors;
- the General Counsel;
- the Deputy General Counsel, Litigation & Investigations; and
- the Senior Manager, Enterprise & Corporate, Legal.

For information concerning the manner in which the above officers may be contacted, please refer to the section of this document titled '*How to make a PID*'.

An internal PID may also relevantly be made to an authorised officer of:

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<sup>16</sup> Section 60 of the PID Act.

<sup>17</sup> Sections 44(3) and 60 of the PID Act.

<sup>18</sup> Section 44(4) of the PID Act and section 6(2)(b) of Public Interest Disclosure Standard 2013.

- the agency to which the relevant discloser belongs or last belonged;
- the Commonwealth Ombudsman (if the discloser believes on reasonable grounds that it would be appropriate for the disclosure to be investigated by the Ombudsman);
- the Inspector-General of Intelligence and Security (IGIS) (in certain circumstances); or
- any other investigative agency which has the power to investigate the disclosure otherwise than under the PID Act<sup>19</sup>.

## Managers and Supervisors

If a supervisor or manager at APRA has reasonable grounds to believe that information given to them concerns, or could concern, disclosable conduct, they must give that information to an Authorised Officer as soon as reasonably practicable<sup>20</sup>. APRA prefers that managers and supervisors give relevant information to its Authorised Officers by way of email to [PID@apra.gov.au](mailto:PID@apra.gov.au).

Where a disclosure is made to a manager or supervisor, the manager or supervisor should make a written record of the fact of the disclosure. If the disclosure is made orally, the manager or supervisor should make a written record of what was said and should ask the discloser to sign the record as being correct.

The manager or supervisor should also inform the discloser that they intend to refer the disclosed information to an Authorised Officer for assessment under the PID Act, and should be careful to ensure that they comply with their confidentiality obligations under the same.

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<sup>19</sup> Item 1 of section 34 of the PID Act.

<sup>20</sup> Section 60A of the PID Act.

# What happens after a PID is made?

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## Allocation of the PID

The relevant Authorised Officer will use their best endeavours to allocate the handling of the PID to one or more relevant agencies (which may include APRA) within fourteen days of receiving the PID unless they are satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered to be an internal PID.

If the Authorised Officer decides to allocate a disclosure to an agency, they will notify:

- the principal officer of each relevant agency;
- depending on the circumstances, either the Commonwealth Ombudsman or the IGIS; and
- the discloser.

In the case of the discloser in particular, the Authorised Officer will ensure that relevant information concerning the allocation is provided as soon as reasonably practicable<sup>21</sup>.

## Decision to investigate

Upon the allocation of a PID to APRA, the relevant PID will be investigated unless the Principal Officer exercises their discretion under the PID Act not to investigate, or to further investigate, the disclosure. Alternatively, where appropriate, the Principal Officer may decide to investigate the relevant PID under a separate investigative power (if any such power exists in relation to the disclosure)<sup>22</sup>.

Where reasonably practicable, the discloser will, within fourteen days after the allocation of the relevant PID to APRA, be provided with information about the Principal Officer's powers to decide:

- not to investigate, or to further investigate, the relevant disclosure; or
- to investigate the disclosure under a separate investigative power.

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<sup>21</sup> The Authorised Officer will also make an appropriate written record of (i) the allocation (which will include the name of each agency to which the disclosure is allocated, the reasons for the allocation decision and the consent provided by each agency to which the allocation has been made), and (ii) whether or not the discloser was informed of the allocation decision and if so, of the date, time, means and content of the notification. If the discloser is not informed of the allocation decision, a written record will also be made explaining why, including details of the time, date and method of any contact attempts made.

<sup>22</sup> Sections 48 and 49(1) of the PID Act.

The discloser will also be informed as soon as reasonably practicable of the Principal Officer's obligation to investigate the relevant PID<sup>23</sup> or, alternatively, of the Principal Officer's decision not to investigate, or further investigate, the disclosure<sup>24</sup>.

In the event that a decision is made to investigate the relevant PID under a separate investigative power, APRA will, upon completing its separate investigation, inform the principal officers of each of the agencies to which any of the suspected disclosable conduct relates, as well as the discloser (unless contacting the discloser is not reasonably practicable).

As previously noted, the Principal Officer may delegate in writing any or all of their functions or powers under the PID Act to a public official who belongs to APRA<sup>25</sup>. This includes delegating the function of investigating a PID.

## Conducting an investigation

In conducting a PID investigation, APRA will seek to establish whether one or more instances of disclosable conduct have occurred.

Subject to the requirements of the PID Act, the Investigator will conduct the investigation, and make such inquiries, as they think fit.<sup>26</sup> For example, the Investigator may:

- require the provision of existing records and/or seek general background information from APRA staff members;
- seek to obtain additional and/or specific information from the discloser or other relevant stakeholders; or
- seek to obtain information and make inquiries through conducting interviews with the discloser and/or relevant APRA staff members.

It is important to note that disclosers are obliged under the PID Act to use their best endeavours to assist the Investigator in the conduct of a PID investigation<sup>27</sup>.

APRA Legal will be the coordination point for a PID investigation and leverage relevant skills and capabilities as required.

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<sup>23</sup> In such circumstances, the discloser will also be informed of the estimated length of the investigation.

<sup>24</sup> In the event that such a decision is made, the discloser will also be informed of the reasons for the decision and of any other courses of action that might be available to the discloser under other Commonwealth laws.

<sup>25</sup> Section 77(1) of the PID Act.

<sup>26</sup> Section 53 of the PID Act.

<sup>27</sup> Section 61(1) of the PID Act.



## Time limits

A PID investigation will be completed within ninety days after the relevant PID was allocated, unless the timeframe for the relevant investigation is extended, or further extended, by the Commonwealth Ombudsman<sup>28</sup>.

If the timeframe for the investigation is extended, or further extended, the Commonwealth Ombudsman will inform the discloser of the fact, and reasons for, the extension. The Investigator will also inform the discloser of the progress of the investigation as soon as reasonably practicable after the extension. However, neither of these obligations apply if contacting the discloser is not reasonably practicable.

## Investigation Report

A PID investigation will be complete when the Investigator has prepared a report of the investigation<sup>29</sup>. The report must set out certain matters, such as the:

- matters considered in the course of the investigation;
- duration of the investigation;
- Investigator's findings; and
- the action (if any) that has been, is being, or is recommended to be, taken.

The general position will be to adopt pseudonyms and gender-neutral language in relation to any individuals, including the discloser, named in the report. This is to minimise any risk of the discloser's identity being revealed and of any reprisal against the discloser and any witnesses who may be named in the report.

Where contacting the discloser is reasonably practicable, a copy of the report will be provided to the discloser within a reasonable time after its preparation. The report remains subject to confidentiality requirements and APRA is not required to publish it. Certain de-identified data<sup>30</sup> is reported to the Commonwealth Ombudsman annually. The Commonwealth Ombudsman may publish this de-identified data in its annual report.

## Actions to be taken at the end of an investigation

What happens at the end of an investigation will vary depending upon the circumstances.

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<sup>28</sup> A failure to complete an investigation within the time limit does not affect the validity of the investigation.

<sup>29</sup> Section 52(2) of the PID Act.

<sup>30</sup> Information reported includes the number of PIDs received, kinds of disclosable conduct subject to a PID, number of investigations conducted and actions taken in response to report recommendations.

However, the Principal Officer will ensure that appropriate action is taken in response to recommendations in the relevant investigation report, or any other matters raised in such a report, that relate to APRA<sup>31</sup>.

## **Risk assessment concerning reprisals**

The Principal Officer is required to take reasonable steps to protect all public officials who belong to APRA from detriment, or threats of detriment, relating to PIDs made by those public officials<sup>32</sup>.

To this end, as soon as practicable after a PID is received, an assessment of the risks that reprisals may be taken against the discloser, as well as any others who may be at risk of reprisal because of a PID (such as witnesses and APRA staff members subject to any allegation), will be undertaken.

The risk assessment will be conducted by the Authorised Officer who received the PID or by another APRA staff member who has the requisite skills and experience to conduct such an assessment. Where a PID has been made anonymously, a risk assessment will still be conducted to determine whether the discloser's identity can be readily ascertained or may become apparent during an investigation.

At a high level, the risk assessment involves:

1. Identifying – whether there are any actual or potential reprisals or conflicts in the workplace;
2. Assessing – the likelihood and consequence(s) of any reprisals or workplace conflicts;
3. Controlling – considering the strategies which should be implemented in order to prevent or contain reprisals or related workplace conflicts; and
4. Monitoring and reviewing – implementing the strategies and assessing whether they were effective.

The Commonwealth Ombudsman's *Guide to assessing and managing the risk of reprisal*, which is available on its [website](#), will also be considered when undertaking a risk assessment.

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<sup>31</sup> Section 59(4) of the PID Act.

<sup>32</sup> Section 59(3)(a) of the PID Act.

# Confidentiality

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It is an offence under the PID Act:

- for a person to disclose or use information which was obtained by that person in the course of conducting a PID investigation or in connection with the performance of a function, or the exercise of a power, by the person under the PID Act<sup>33</sup>; or
- to disclose the identity of a discloser,

in each case subject to certain exceptions (such as where a disclosure is required for the purposes of the PID Act).

A PID investigation relating to APRA must also be conducted on a confidential basis<sup>34</sup>, and APRA has procedures in place to ensure compliance with this requirement.

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<sup>33</sup> Section 65(1) of the PID Act.

<sup>34</sup> Section 59(1)(b) of the PID Act.

# Support

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APRA is committed to ensuring the wellbeing of, and the provision of appropriate support to, any person who makes a PID and any other APRA staff members who may be impacted by a PID (for example, due to a request for information and/or to attend an interview during the conduct of a PID investigation).

Examples of support which may be provided include the provision of:

- information about the PID process;
- information concerning the availability of employee assistance programs;
- a central point of contact to deal with any queries which the relevant discloser or APRA staff member may have; and
- assurance that APRA will take all reasonable steps which are necessary to protect the relevant discloser or APRA staff member.

Support may also be provided by a supervisor or manager (if appropriate) or an Authorised Officer, as well as by family and friends. In seeking and obtaining support, disclosers and other impacted persons should be careful to ensure that they do not breach any applicable confidentiality obligations (whether under the PID Act or otherwise).



APRA