



GUIDELINE

Assessment and investigation of reports made under the *Public Interest Disclosure Act 2013*

Direction to staff

This document is instructional material for the Department of Agriculture and Water Resources (the department) under its Practice Statement Framework. All staff must comply with it.

Summary of main points

This document outlines:

- The department’s policies relating to disclosures made under the *Public Interest Disclosure Act 2013* (PID Act).
- Legislative protections and obligations under the PID Act.
- Roles and responsibilities of the implementation of the department’s obligations under the PID Act.
- The processes for making of, assessment, and investigation of disclosures.

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Purpose of this document

This document, along with the work instructions set out in **section: Related Material**, details the department's process for facilitating and dealing with public interest disclosures for the purposes of section 59(1) of the *Public Interest Disclosure Act 2013* (PID Act).

This document outlines the application of the public interest disclosure legislation and the provisions and protections available to public officials who make a disclosure. It also outlines the department's obligations under the legislation with regards to the management of disclosures made under the PID Act.

Note: The department is committed to the highest standards of ethical behaviour and accountable conduct. The department encourages the reporting of wrongdoing under the PID Act, and will act on disclosures where appropriate and protect disclosers from any reprisals or threats of reprisal as a result of making a disclosure.

Definitions

The following table defines terms used in this document.

Term	Definition
Public interest disclosure (disclosure)	<p>The reporting, in the public interest, of conduct that may amount to breaches of the APS Code of Conduct but also other types of wrongdoing, such as illegality, corruption, perverting the course of justice, causing financial waste and acts that endanger the health and safety of others or the environment.</p> <p>Important: The disclosure must be made by a public official to a person who is authorised to receive the discloser.</p>
Public officials	<ul style="list-style-type: none">• Current or former APS employeesor• Current or former contractors or subcontractors to the APS. <p>Note: All Department of Agriculture and Water Resources staff, contractors, consultants, service providers, Authorised and Accredited Officers are public officials for the purpose of the PID Act.</p>

Policy statement

- A disclosure can only be made by a public official.
- A disclosure must be made to
 - either the Secretary (principal officer), or an authorised internal recipient (authorised officer)
 - or
 - a supervisor or manager of the person making the disclosure (the discloser)
 - or
 - the Ombudsman.
- Upon receipt of a disclosure, an authorised officer will undertake a preliminary assessment of the allegation and allocate the handling of the disclosure.

Note: This assessment will take no longer than 14 days.
- The Secretary (or delegate) will
 - investigate the disclosure (unless a decision is taken to exercise discretion not to investigate the disclosure in accordance with the Act)

- complete an investigation, and prepare a report in relation to a disclosure allegation within 90 days.

Note: The 90 days commences from the date the preliminary assessment of the allegation is completed and the matter is allocated to an investigator.

- The identity of the PID discloser must remain confidential and only be available to individuals involved in handling the disclosure and who the discloser has consented their identity be released to, unless there is a lawful reason to release the identity of the discloser.
- The provisions of the PID Act are not an alternative avenue to seek review of an APS action (i.e. administrative action or decision that personally affects a public official), nor are they an additional process available where an applicant is not satisfied with the outcomes of a review of an APS action undertaken by the department and/or the Merit Protection Commissioner.

Legislative framework

Protection of public officials making public interest disclosures

The following protections apply to public officials who make a disclosure, irrespective of whether they identify a report as being a disclosure, or whether they seek the protection afforded by the PID Act.

Section 10 of the PID Act establishes a legal framework for ‘protection of disclosers’ in which allegations can be raised without reprisal being taken or threatened against the discloser for making the disclosure (or for being suspected of having made the disclosure).

Important: The protections provided in the PID Act do not apply to reports made prior to the effective date of the PID Act (15 January 2014). However, disclosures made following this date that relate to disclosable conduct that occurred before this date will attract the relevant protections for the discloser.

The following table outlines the legislation that applies to protections for public officials that make a public interest disclosure (provided under Sections 9 to 24 of the PID Act).

Legislation	Protection
PID Act, s 19	Under the PID Act, it is a criminal offence to take reprisal, or threaten to take a reprisal, against a PID discloser (or suspected PID discloser). Any act of reprisal including harassment, unfair treatment, attempted victimisation of or discrimination against a PID discloser is a criminal offence. Instances of such action should be referred to the Fraud & Corruption Team. The matter will be referred to the relevant authorities for further action where it is deemed serious enough to warrant it.
PID Act, ss 10 and 11	A PID discloser should not be subject to any civil, criminal or administrative liability (including disciplinary action) for making the public interest disclosure. These protections do not apply when a public official knowingly makes a statement that is false or misleading.
PID Act, s 12	A PID discloser is not immune from administrative or criminal action for their participation in the unlawful conduct that they may subsequently report. The immunity relates solely to action that may be taken as a result of them making the disclosure.

Legislation	Protection
PID Act, s 13	Public officials, contractors and consultants are prohibited from taking retaliatory action or reprisal against a PID discloser. Action is considered a reprisal if it causes detriment to the discloser because they made the disclosure or it was believed that they made a disclosure. Detriment can be defined (but is not limited to) dismissal, injury, alteration of a discloser's position or discrimination against the discloser.
PID Act, s 19A	Administrative action taken to ensure the protection of the discloser from threat of reprisal (for example: removing the discloser from a work environment) will not be treated as a reprisal.
PID Act, ss 14, 15 and 16.	A public official can seek remedy for reprisal action taken against them for making a PID disclosure in the form of reinstatement (if appropriate) or compensation.

Protections under the *Fair Work Act 2009*

Making a public interest disclosure is considered a 'workplace right' for the purposes of the *Fair Work Act 2009* (FWA). However, a public official cannot seek remedy under the FWA Act for reprisal action taken if they have already made an application under the PID Act.

The following table outlines the legislation that applies to making a public interest disclosure.

Legislation	Protection
FWA, s 340	Provides for protection of an employee who exercises a workplace right or intends to exercise a workplace right.
FWA, Part 4.1	Sets out civil remedies available for contraventions of the general protection provisions within the FWA which include circumstances where an employee believe that they have been in any way discriminated against for exercising their workplace rights.

Legislative obligations

The following table outlines the legislation that applies to relevant legal obligations to the making of PIDs.

Legislation	Protection
PID Act, s 20	It is an offence to disclose information that is likely to enable the identification of a PID discloser. However there are limited circumstances where it is lawful, under this section, for a person to disclose information likely to identify the PID discloser. The penalty for this offence may be up to six (6) months imprisonment, a fine or both.
<ul style="list-style-type: none"> • PID Act, s 29 • WHS Act 	The PID Act reinforces a public official's obligations and responsibilities under the <i>Commonwealth Work Health and Safety Act 2011</i> (WHS Act) for reporting matters concerning the health, safety or welfare of public officials at work.

Legislation	Protection
FOI Act, Parts III and IV	<p>Access to records and other material relating to an inquiry or investigation will be dealt with under the <i>Freedom of Information Act 1982</i> (FOI Act).</p> <p>Exemption provisions in the FOI Act apply to certain documents.</p> <p>Protection from certain legal actions for those who grant access and for authors and suppliers of documents is also provided for in the FOI Act.</p>
<i>Crimes Act 1914</i> , s 70	<p>It is an offence for a Commonwealth officer to publish or communicate any fact or document, which it is their duty not to disclose.</p> <p>Note: A public interest disclosure, made to a person who is authorised to receive it under established procedures, will not, of itself, be in breach of the Code of Conduct or an offence under section 70 of the <i>Crimes Act 1914</i>. However, protections provided under the PID Act will not apply where a public official knowingly discloses information that contravenes a designated publication restriction (as defined in Section 8 of the PID Act).</p>
Public Service Regulations, reg 2.1.	<p>Provides that an APS employee must not, except in the course of his or her duties as an APS employee or with the agency head's express authority, give or disclose, directly or indirectly, to any person any information about public business or anything of which the employee has official knowledge</p>

Roles and responsibilities

The following table outlines the roles and responsibilities undertaken in this guideline.

Role	Responsibility
Authorised Officer (AO)	<ul style="list-style-type: none"> • Receiving reports from public officials and assessing whether they meet the definition of disclosable conduct. • Allocating internal disclosures to the Principal Officer of an agency. • Informing a public official about their rights and responsibilities when they are considering making a public interest disclosure. • Using their best endeavours to ensure that each public interest disclosure is allocated to an agency Principal Officer within 14 days. • Assisting the Principal Officers with the collection of information which will enable a risk assessment in relation to the chance of reprisals taking place. • Maintaining appropriate records in relation to each public interest disclosure made by a current or former agency public official. • Documenting key decisions made in relation to the disclosure.
Fraud and Corruption Team (F&CT)	<ul style="list-style-type: none"> • Ensuring the contact details of authorised officers are available on the department's <ul style="list-style-type: none"> ○ intranet ○ public website.

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Role	Responsibility
	<ul style="list-style-type: none"> • Managing the department’s reporting mechanisms including an <ul style="list-style-type: none"> ○ answering service ○ email account ○ fax machine. • Ensuring that information about the Public Interest Disclosure Scheme is available on the department’s <ul style="list-style-type: none"> ○ intranet ○ public website. • Maintaining the appropriate policies and procedures in accordance with the PID Act. • Preparing annual and other routine reporting to the Ombudsman. • Maintaining appropriate records within the administration of the PID register in relation to each public interest disclosure received, for annual reporting. • Maintaining appropriate records in relation to each investigation conducted under the PID Act.
Principal Officer (PO) – delegated investigative functions	<ul style="list-style-type: none"> • Deciding whether an investigation is required in relation to each public interest disclosure. • Conducting the investigation in accordance with the PID Act, including the subordinate documents referred to in the PID Act. • Ensuring that PID-Act investigations are conducted and an investigation report is completed within 90 days, unless the Ombudsman has granted an extension of time. • Ensuring, as far as is practicable, that a person who makes a public interest disclosure is protected against reprisals. • Conducting a risk assessment, with the assistance of the AO where necessary, in relation to the chance of reprisals taking place. • Maintaining appropriate records in relation to each public interest disclosure made by a current or former agency Public Official, documenting key decisions made in relation to the Disclosure.
Public official	<ul style="list-style-type: none"> • Ensuring that they are aware of the content of this guideline. • Promptly reporting incidents that they suspect meet the definition of a public interest disclosure to <ul style="list-style-type: none"> ○ an authorised officer or ○ a supervisor or ○ manager. • Where a public official is a supervisor or manager and another public official provides them with information that

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Role	Responsibility
	<p>meets the definition of a public interest disclosure, ensuring that the information is passed to an authorised officer promptly.</p> <ul style="list-style-type: none"> • Ensuring that they use their best endeavours to assist an officer investigating a public interest disclosure.
Secretary	<ul style="list-style-type: none"> • Ensuring that the disclosure is properly investigated, appropriate action is taken in response to the investigation report and providing feedback to the discloser, including actions taken (within requirements of privacy provisions). • Ensuring that appropriate PID procedures are in place within the organisation. • Appointing an adequate number of authorised officers to ensure that all public officials are able to access an authorised officer for the purpose of making a disclosure. • Ensuring that a list of authorised officers, and the appropriate contact details, are published on the department's intranet and public website. • Ensuring that all staff are aware of the operation of the PID Act, including <ul style="list-style-type: none"> ○ how to make a disclosure ○ who to make a disclosure to ○ what protections are afforded to a public official who makes a disclosure. • Ensuring that support is provided to a public official who makes a disclosure, including <ul style="list-style-type: none"> ○ taking all reasonable steps to protect the identity of a public official who makes a disclosure ○ providing access to the department's Employee Assistance Program (where appropriate) ○ providing details of the investigator appointed to the matter who can discuss with the discloser concerns that the discloser may have as the investigator proceeds. • Ensuring that support is provided to a public official who is subject to disclosure, including <ul style="list-style-type: none"> ○ taking all reasonable steps to protect the identity of a public official subject to disclosure ○ providing access to the department's Employee Assistance Program (where appropriate). • Ensuring that support is provided to all departmental staff who undertake roles to enable the scheme including <ul style="list-style-type: none"> ○ training ○ adequate resources to fulfil their obligations ○ access to the department's Employee Assistance Program.

Reporting disclosable conduct

The contact details for AOs for each Region and in the F&CT can be found on the Public Interest Disclosure page on mylink.

Disclosable conduct

The department will accept disclosures about matters referred to as disclosable conduct which includes conduct by an agency, a public official or a contracted Commonwealth service provider that:

- contravenes a law
- is corrupt
- perverts the course of justice
- results in waste, misuse or mismanagement of resources
- is an abuse of public trust
- unreasonably endangers health and safety or endangers the environment
- is misconduct relating to scientific research, analysis or advice
- is maladministration, including conduct that is unjust, oppressive or negligent.

Important: Complaints about government policy will not be dealt with under PID provisions.

Possible recipients of a disclosure

A disclosure can only be made:

- directly to an authorised officer
- through a supervisor or manager of a public official (who is then required to forward the information to an authorised officer)
- directly to the Secretary, Department of Agriculture and Water Resources
- directly to the Commonwealth Ombudsman
- to the Australian Commission for Law Enforcement Integrity (ACLEI), if the person the disclosure is being made about is a prescribed staff member under the *Law Enforcement Integrity Commissioner Act*.

Note: Making a report to any other person will not attract the protection(s) afforded by the PID Act.

Requirements for making a disclosure

- The public official providing the disclosure is to provide as much detail as possible about the alleged disclosable conduct in so far as the details are known.
- The disclosure may be made
 - in writing (including by electronic means)
 - or
 - verbally.
- Public officials may make an anonymous report.

Notes:

- Where this is supported by sufficient evidence to justify an investigation proceeding, it will be dealt with under the process detailed in this guideline.
- An anonymous report can be difficult to investigate as it may not be possible to check the details of the allegation or to obtain additional information. As a result investigations may not be conducted into anonymous reports.

Receiving a disclosure

The following table outlines the process for receiving a disclosure.

Stage	What happens	Responsible party						
1.	A disclosure is made.	Public official						
2.	<table border="1"> <thead> <tr> <th>When...</th> <th>Then...</th> </tr> </thead> <tbody> <tr> <td>the report is made to an AO</td> <td> the AO will assess the disclosure to determine: <ul style="list-style-type: none"> • whether the disclosure should be allocated • which agency the disclosure is to be allocated to. </td> </tr> <tr> <td> the report is made to a: <ul style="list-style-type: none"> • supervisor or • manager </td> <td> it will be forwarded to an AO as soon as reasonably practicable so an allocation assessment of the disclosure can be made. <p>Important:</p> <ul style="list-style-type: none"> • Supervisors and managers should be very careful when discussing disclosures made to them. • A supervisor or manager should <ul style="list-style-type: none"> ○ contact an AO as soon as practicable following a disclosure being made ○ not discuss the matter further with anyone other than the PID discloser. </td> </tr> </tbody> </table>	When...	Then...	the report is made to an AO	the AO will assess the disclosure to determine: <ul style="list-style-type: none"> • whether the disclosure should be allocated • which agency the disclosure is to be allocated to. 	the report is made to a: <ul style="list-style-type: none"> • supervisor or • manager 	it will be forwarded to an AO as soon as reasonably practicable so an allocation assessment of the disclosure can be made. <p>Important:</p> <ul style="list-style-type: none"> • Supervisors and managers should be very careful when discussing disclosures made to them. • A supervisor or manager should <ul style="list-style-type: none"> ○ contact an AO as soon as practicable following a disclosure being made ○ not discuss the matter further with anyone other than the PID discloser. 	Supervisor/AO
When...	Then...							
the report is made to an AO	the AO will assess the disclosure to determine: <ul style="list-style-type: none"> • whether the disclosure should be allocated • which agency the disclosure is to be allocated to. 							
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3.	The AO: <ul style="list-style-type: none"> • informs the discloser that the disclosure could be handled under the PID Act • explains the requirements of a disclosure under the PID Act • informs the discloser of <ul style="list-style-type: none"> ○ any relevant restrictions on the disclosure of information ○ the protections afforded by the PID Act. 	AO						

Assessment of disclosures by the authorised officer

The following table outlines the process for assessing a disclosure.

Stage	What happens	Responsible party						
1.	<p>All disclosures received are assessed to whether the matter meets the definition of disclosable conduct.</p> <table border="1"> <thead> <tr> <th>If the disclosure...</th> <th>Then...</th> </tr> </thead> <tbody> <tr> <td>does not meet the definition of an internal disclosure</td> <td> <p>the discloser is advised in writing of:</p> <ul style="list-style-type: none"> • that decision • the reasons for the decision. </td> </tr> <tr> <td>meets the definition of an internal disclosure</td> <td> <p>the matter is allocated to:</p> <ul style="list-style-type: none"> • the Principal Officer in the agency or • another relevant agency. <p>Note: The Principal Officer may seek support and legal advice in carrying out their duties.</p> </td> </tr> </tbody> </table>	If the disclosure...	Then...	does not meet the definition of an internal disclosure	<p>the discloser is advised in writing of:</p> <ul style="list-style-type: none"> • that decision • the reasons for the decision. 	meets the definition of an internal disclosure	<p>the matter is allocated to:</p> <ul style="list-style-type: none"> • the Principal Officer in the agency or • another relevant agency. <p>Note: The Principal Officer may seek support and legal advice in carrying out their duties.</p>	AO
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2.	<p>Written advice about the allocation of the disclosure is provided to:</p> <ul style="list-style-type: none"> • the Ombudsman • the discloser. 	AO						
3.	<ul style="list-style-type: none"> • The PO (in consultation with the Authorised Officer who received the disclosure) assesses the risk of reprisals against disclosers. • All identified risks are managed accordingly. 	PO						
4.	<p>The PO advises the discloser in writing of the PO's powers to decide:</p> <ul style="list-style-type: none"> • whether or not to investigate or • to cease an investigation if a decision is made to commence and investigation. 	PO						

Investigation of disclosures

The following table details the process for investigating a disclosure.

Stage	What happens	Responsible party										
1.	<table border="1"> <thead> <tr> <th data-bbox="304 353 655 407">If the PO ...</th> <th data-bbox="655 353 1126 407">Then...</th> </tr> </thead> <tbody> <tr> <td data-bbox="304 418 655 689"> <p>determines that the disclosure suggests a corrupt activity by a 'prescribed staff member' under the <i>Law Enforcement Integrity Commissioner Act 2006</i></p> </td> <td data-bbox="655 418 1126 689"> <p>the matter is forwarded to the Australian Commission for Law Enforcement Integrity (ACLEI) for investigation.</p> </td> </tr> <tr> <td data-bbox="304 701 655 1216"> <p>decides not to investigate for one or more of the reasons contained in s48 of the PID Act</p> <p>Note: False, misleading, frivolous or vexatious disclosures may constitute a breach of the Code of Conduct. Innocent mistakes however will not breach the Code of Conduct.</p> </td> <td data-bbox="655 701 1126 1216"> <ul style="list-style-type: none"> • the discloser is advised in writing about the decision, including <ul style="list-style-type: none"> ○ grounds on which the decision was made ○ the reasoning process that lead to the decision. • the discloser is advised of other courses of action that may be available to them • the Ombudsman is notified in writing of the decision not to investigate. </td> </tr> <tr> <td data-bbox="304 1227 655 1473"> <p>determines that an investigation is required</p> </td> <td data-bbox="655 1227 1126 1473"> <p>the discloser is notified in writing of:</p> <ul style="list-style-type: none"> • the decision to investigate the matter • the estimated length of the investigation. </td> </tr> <tr> <td data-bbox="304 1485 655 1995"> <p>decides, after commencing an investigation, to not investigate the disclosure further for one or more reasons contained in s48</p> </td> <td data-bbox="655 1485 1126 1995"> <ul style="list-style-type: none"> • the discloser is advised in writing about the decision, including <ul style="list-style-type: none"> ○ grounds on which the decision was made ○ the reasoning process that lead to the decision. • the discloser is advised of other courses of action that may be available to them • the Ombudsman is notified in writing of the decision not to investigate further. </td> </tr> </tbody> </table>	If the PO ...	Then...	<p>determines that the disclosure suggests a corrupt activity by a 'prescribed staff member' under the <i>Law Enforcement Integrity Commissioner Act 2006</i></p>	<p>the matter is forwarded to the Australian Commission for Law Enforcement Integrity (ACLEI) for investigation.</p>	<p>decides not to investigate for one or more of the reasons contained in s48 of the PID Act</p> <p>Note: False, misleading, frivolous or vexatious disclosures may constitute a breach of the Code of Conduct. Innocent mistakes however will not breach the Code of Conduct.</p>	<ul style="list-style-type: none"> • the discloser is advised in writing about the decision, including <ul style="list-style-type: none"> ○ grounds on which the decision was made ○ the reasoning process that lead to the decision. • the discloser is advised of other courses of action that may be available to them • the Ombudsman is notified in writing of the decision not to investigate. 	<p>determines that an investigation is required</p>	<p>the discloser is notified in writing of:</p> <ul style="list-style-type: none"> • the decision to investigate the matter • the estimated length of the investigation. 	<p>decides, after commencing an investigation, to not investigate the disclosure further for one or more reasons contained in s48</p>	<ul style="list-style-type: none"> • the discloser is advised in writing about the decision, including <ul style="list-style-type: none"> ○ grounds on which the decision was made ○ the reasoning process that lead to the decision. • the discloser is advised of other courses of action that may be available to them • the Ombudsman is notified in writing of the decision not to investigate further. 	PO
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Stage	What happens	Responsible party
2.	<p>All investigations are conducted in accordance with:</p> <ul style="list-style-type: none"> • the Australian Government Investigation Standards • Public Interest Disclosure Standards 2013. <p>Note: Investigation requirements:</p> <ul style="list-style-type: none"> • All disclosures that proceed to a Code of Conduct inquiry are conducted in accordance with the requirements of the <i>Public Service Act 1999</i>. • All disclosures relating to fraud against the Commonwealth are investigated in accordance with the Commonwealth Fraud Control Guidelines. • All inquiries conducted comply with the requirements for the collection and storage of personal information, how it is used and to whom it should be disclosed in accordance with the requirements of the <i>Privacy Act 1988</i>. <p>Important: The principles of natural justice will inform the investigative process at all times.</p>	PO
3.	A final investigation report is prepared for the Secretary (or delegate) outlining findings and recommendations.	PO
4.	The discloser is notified when the report of the investigation is completed.	PO
5.	<p>A copy of the investigation report is provided to the discloser.</p> <p>Note: The report may contain redactions.</p>	PO
6.	If a public official is dissatisfied with the outcome of the internal investigation of their disclosure, they may refer the matter to the Commonwealth Ombudsman.	Public official
7.	<p>Under certain circumstances, a public official who has made an internal disclosure may make an external disclosure.</p> <p>Note: The discloser should seek independent legal advice prior to making an external disclosure.</p>	Public official

Record keeping

Role	Recordkeeping responsibility
Supervisors and managers	<ul style="list-style-type: none"> • Records of conversations that they have with staff which may involve disclosable conduct. • Advice provided and actions taken, in relation to disclosable conduct, including the reasons for providing that advice.
Authorised officer (AO)	<p>When an AO allocates the handling of a disclosure to one or more agencies, keeping an appropriate written record of:</p> <ul style="list-style-type: none"> • the decision (including the name of each agency to which the disclosure is to be allocated) • the reasons for the decision • the consent provided by the agency to which the allocation is made • whether the discloser was informed of the decision and, if so <ul style="list-style-type: none"> ○ the day and time the discloser was notified ○ the means by which the discloser was notified ○ the content of the notification. <p>Important: Records and documents relating to a disclosure must be kept in such a way that:</p> <ul style="list-style-type: none"> • the identity of the public official making the disclosure cannot be accessed by any other person • the identity of the public official subject to the disclosure cannot be accessed by any other person. <p>Note: Once the authorised officer has allocated the matter all documents are to be provided to the F&CT.</p>
Fraud and Corruption Team (F&CT)	<p>Storing:</p> <ul style="list-style-type: none"> • Records of disclosures centrally, in a secure environment. • The procedures established by a principal officer under subsection 59(1) of the Act. <p>Important: F&CT must ensure that records can only be accessed by persons dealing with the disclosure.</p> <p>Note: All other records will be created and maintained in accordance with the appropriate F&CT work instruction(s).</p>
Principal Officer (PO)	Providing records to F&CT for retention at the conclusion of the investigation.

Document information

The following table contains administrative metadata.

Instructional Material Library document ID	Instructional material owner
IMLS-12-995	Director, Fraud and Security

Version history

The following table details the published date and amendment details for this document.

Version	Date	Amendment details
1.0	13/01/2014	First publication of guideline.
2.0	22/03/2019	<ul style="list-style-type: none">• Updated changes to the administration of the PID process.• Updated section names to reflect separation from Security.• Updated responsibilities of the PO with the removal of F&ST.