Australian Government

PUBLIC INTEREST DISCLOSURE SCHEME

Template W.1. – Please remove prior to distribution

Public Interest Disclosure (PID) Witness Reprisal Risk Self-Assessment for witnesses

All current and former public officials are obliged to use their best endeavours to assist a principal officer with an investigation, and to assist any other public official to exercise a right, or perform a duty or function, under the PID Act (s 61).

The PID Act provides protection for any witness who provides assistance in relation to a public interest disclosure. These protections are the same as those afforded to disclosers under the PID Act and include immunity from criminal or civil liability and protection from reprisal, including threats of reprisal. This includes the limitations on those protections.

This self-assessment is to identify any relevant potential reprisal risks involved for yourself.

What is reprisal?

A reprisal is where an individual acts in a way to threaten, harm or cause detriment to a discloser or witness because they believe or suspect that the person has already made a PID, can or will make one in the future or is assisting in a PID investigation.

Administrative action that is reasonable to protect witnesses from detriment is not a reprisal. Providing assistance in a PID investigation does not exclude you from reasonable management action for unsatisfactory performance or wrongdoing on your part. Both making a disclosure and providing assistance as a witnesses does not protect a person from the consequences of their own improper conduct if they are implicated in the wrongdoing they have reported.

For the department to assess these risks and put in place appropriate strategies to prevent or contain them, please respond honestly to the following questions.

If at any stage you believe you are at risk of suffering any detriment as a result of your disclosure, or you believe you have suffered detriment, please contact your Authorised Officer immediately.

Once completed please return this form to your designated Authorised Officer.

Discloser Details

PID Case Number:	Click or tap here to enter text.
Full Name:	Click or tap here to enter text.
Signature:	
Date:	Click or tap to enter a date.

Risk Assessment Questions

1. Have you reported or discussed the existence of this PID investigation or your involvement as a witness to any other person or agency? If yes, to whom and what was their response? If available, please provide a copy of their response.

☐ YES ☐ NO

Comments:

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Click here to enter text.

2. Are you concerned about possible reprisals for assisting in a PID Investigation? If so, please provide details of any potential reprisal.

☐ YES ☐ NO

Comments:

Click here to enter text.

3. Has a specific threat already been made against you with regard to you providing assistance in relation to this investigation? If so, please provide details.

☐ YES ☐ NO

Comments:

Click here to enter text.

4. TBA If so, please provide details.

☐ YES ☐ NO

Comments:

Click here to enter text.

5. Do you have any other information or concerns regarding your risk of reprisal that you wish the Authorised Officer to be aware of? If so, please provide details.

☐ YES ☐ NO

Comments:

Click here to enter text.

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PUBLIC INTEREST DISCLOSURE SCHEME

Template D.2.

Public Interest Disclosure (PID) Discloser Reprisal Risk Self-Assessment

Under the *Public Interest Disclosure Act 2013* (PID Act), agencies must assess any risk that reprisal may be taken against a person who makes a public interest disclosure.

Before this office acts on your disclosure, an assessment of the potential reprisal risks involved for yourself will be conducted as well as an assessment of the likelihood of your identity becoming known (if you request confidentiality).

What is reprisal?

Reprisal occurs if someone causes, by an act or omission, any detriment to another person because they believe or suspect that person, or anyone else, may have made, may have made, proposes to make or could make a public interest disclosure (s 13(1)).

Administrative action that is reasonable to protect the discloser from detriment is not a reprisal (s 13(3)). Making a disclosure does not exclude the discloser from reasonable management action for unsatisfactory performance or wrongdoing on their part. Making a disclosure does not protect a person from the consequences of their own improper conduct if they are implicated in the wrongdoing they have reported.

For this office to assess these risks and put in place appropriate strategies to prevent or contain them, please respond honestly to the following questions.

If at any stage you believe you are at risk of suffering any detriment as a result of your disclosure, or you believe you have suffered detriment, please contact your Authorised Officer immediately.

Once completed please return this form to your designated Authorised Officer.

Discloser Details

PID Case Number:	Click or tap here to enter text.
Full Name:	Click or tap here to enter text.
Signature:	
Date:	Click or tap to enter a date.

Risk Assessment Questions

1. Have you reported this matter to any other person or agency? If yes, to whom and what was their response? If available, please provide a copy of their response.

☐ YES ☐ NO

Comments:

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PUBLIC INTEREST DISCLOSURE SCHEME

2. Are you concerned about possible reprisals for making this report? If so, please provide details of any potential reprisal.

☐ YES ☐ NO

Comments:

Click here to enter text.

3. Has a specific threat already been made against you with regard to this matter? If so, please provide details.

☐ YES ☐ NO

Comments:

Click here to enter text.

4. The Department will make every effort to finalise the investigation within the timeframe required under the PID Act, however are you concerned that the issues you reported could escalate if the investigation extends beyond this time? If so, please provide details.

☐ YES ☐ NO

Comments:

Click here to enter text.

5. Do you have any other information or concerns regarding your risk of reprisal that you wish the Authorised Officer to be aware of? If so, please provide details.

☐ YES ☐ NO

Comments:

Click here to enter text.

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PID Reprisal Risk Assessment and Plan

PID case No. C../..-..

TIMELINE / BACKGROUND:

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PID Reprisal Risk Assessment – PID case No. C../..-..

DATE RISK IDENTIFIED	REPRISAL ALLEGATION / IDENTIFIED RISK	LIKELIHOOD (Rare, Unlikely, Possible, Almost Certain)	CONSEQUENCE (Insignificant, Minor, Moderate, Major, Critical)	Risk Evaluation (Low, Medium, High, Extreme)	Proposed Mitigation Action	Date Mitigation Action Taken

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Attachment A

INSTRUCTIONS

An initial reprisal risk assessment should be completed, in consultation with the discloser, as soon as possible after a disclosure is received.

The assessment may also require consultation with others not involved in the allegations. This may include managers or supervisors where appropriate. Note If discloser is anonymous the assessor should still undertake assessment to determine if their identity is at risk of being exposed.

The reprisal risk assessment is a "living" document which should be updated during the course of the PID investigation.

It is suggested this assessment be reviewed according to risk level. HIGH = 30 days or less, Medium = 60 days or less and Low - at completion of investigation. Note this is only a planned date and may be varied or undertaken as a result an emerging risk/ threat or a change

Potential risk indicators include:

Threats or Past Experience

- Has a specific threat against the discloser been received?
- Is there a history of reprisals or other conflict in the workplace?
- Is there a history of conflict between the discloser and the subjects of the disclosure, management, supervisors or colleagues?
- Is it likely that the disclosure will exacerbate this?

Confidentiality unlikely to be maintained

- Do other people know that the disclosure has been made or was going to be made?
- Has the discloser already raised the substance of the disclosure or revealed their identity in the workplace?
- Is the discloser's immediate work unit small?
- Are there circumstances, such as the discloser's stress level, that will make it difficult for them to not discuss the matter with people in their workplace?
- Will the discloser become identified or suspected when the existence or substance of the disclosure is made known or investigated?
- Is it impracticable or impossible to investigate the disclosure without maintaining the discloser's confidentiality?

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Significant reported wrongdoing

- Are there allegations about individuals in the disclosure?
- Is there more than one wrongdoer involved in the matter?
- Is the reported wrongdoing serious?
- Is or was the reported wrongdoing occurring frequently?
- Is the disclosure particularly sensitive or embarrassing for any subjects of the disclosure, senior management, the agency or government?
- Do these people have the intent to take reprisals – for example, because they have a lot to lose?
- Do these people have the opportunity to take reprisals – for example, because they have power over the discloser?

Vulnerable discloser

- Is or was the reported wrongdoing directed at the discloser?
- Are there multiple subjects of the disclosure?
- Is the disclosure about a more senior officer?
- Is the discloser employed part-time or on a casual basis?
- Is the discloser isolated – for example, geographically or because of shift work?
- Is the disclosure being investigated outside your organisation?

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Attachment B

RISK MATRIX AND SUGGESTED TREATMENT OPTIONS

Risk Matrix

LIKELIHOOD	Risk Matrix	CONSEQUENCE: Insignificant	Minor	Moderate	Major	Critical
	Almost Certain	Medium	High	High	Extreme	Extreme
	Likely	Medium	Medium	High	High	Extreme
	Possible	Low	Medium	Medium	High	Extreme
	Unlikely	Low	Low	Medium	Medium	High
	Rare	Low	Low	Low	Medium	High

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Reprisal Risk Level	Suggested Treatment Options
High	Relocation/ removal from work area – alleged perpetrator (subject) Relocation/ removal from work area – discloser / witness Frequent monitoring with discloser / witness
	Notification of discloser / witness by investigator before approach to subject/s **NOTE:** Seek legal advice before notifying Subject issued formal notice that reprisal action is a criminal offence Brief and establish management plan with senior management of the discloser's work area Formal Direction to subject/ others not to contact/ communicate with discloser / witness Establish emergency contact procedures for discloser / witness *Also includes Medium and Low treatment options*
Medium	Notification of discloser / witness by investigator before approach to subject/s **NOTE:** Seek legal advice before notifying Regular monitoring with discloser Subject/ others notified of reprisal ramifications PID awareness training in subject work area *Also includes Low treatment options*
Low	Adhoc monitoring with discloser / witness Ongoing discloser consultation of investigation progress Ongoing monitoring during any investigation

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Extracts from DRAFT Standard Operating Procedure: Managing the Public Interest Disclosure (PID) Process

6. Reprisal Risk Assessment – Discloser

6.1. PID Legislative Requirements in relation to Reprisal

6.1.1. The PID Act says that the principal officer must take reasonable steps to protect public officials who belong to their agency from reprisals that have been, or may be, taken in relation to PIDs that have been, may have been, are proposed to be, or could be made within their agency. AOs also have a similar obligation under the PID Act.

6.1.2. When allocating a PID, an AO must conduct a reprisal risk assessment to determine whether reprisal may be taken against the discloser. If reprisal risks are identified, the AO must assess these risks and put in place appropriate strategies to prevent or contain them.

6.1.3. The protections are designed to ensure that disclosers are protected against reprisal action taken on the basis that a person has or may have made, proposes to make, or could make a PID – even if their disclosure does not ultimately meet the criteria in the PID Act.

6.1.4. The PID Act provides that a person commits an offence, punishable by imprisonment, if they take or threaten reprisal against another person.

6.1.5. One aspect of the risk assessment is assessing the likelihood of the discloser's identity becoming known. The AO should assure the discloser that their identity will be protected as much as possible at all times and advise them of the procedures in place to ensure confidentiality of the investigation process.

6.1.6. However, it is important that AOs give a discloser honest and realistic expectations about the agency's capacity to prevent their identity becoming known as the source of the disclosed information. The discloser must be made aware that, during the course of an investigation, their identity may become apparent.

6.2. Reprisal Risk Assessment

6.2.1. The discloser will be asked to complete a reprisal risk assessment, as part of the acknowledgement of receipt of the PID (see Section 5 above). Once the discloser provides the completed reprisal risk assessment, the AO must assess the risk assessment to determine if any remedial action should be taken.

6.2.2. AOs should also liaise with the discloser regularly to determine if their risk of reprisal has changed during the investigation, in which case, the discloser should complete an updated risk assessment.

6.2.3. Every allegation of reprisal must be taken seriously, recorded and responded to. It is important to remember that reprisal captures a broad range of detriment, including employment-related detriment, as well as harassment and intimidation, harm or injury (including psychological harm) and damage to property or reputation, among other matters.

6.2.4. Responses to alleged reprisals will depend on their seriousness and other circumstances. Actions which may be taken to resolve workplace conflict include holding discussions with staff, providing guidance and support and closer supervision of the workplace for inappropriate workplace behaviours.

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6.2.5. If the situation is potentially serious enough to require significant action such as transfer, relocation, a leave of absence, physical protection or an injunction, options should be discussed with the (specialist) area best able to assist in such PID-related matters in the agency.

6.2.6. It may also be appropriate to commence a separate reprisal investigation, particularly if serious reprisal allegations are raised after the completion of the initial PID investigation.

- In these cases, PID officers create a new file record to manage the reprisal independently from the case itself. The file follows the same case file record example: PID Case FY/FY - 01 and PID Case FY/FY - 01R

6.2.7. The discloser should be consulted about possible strategies.

6.2.8. Any solution must be compatible with the confidentiality requirements, noting that these will not usually provide any impediment to actions taken to assist the discloser or the subject of the disclosure.

6.2.9. Relevant templates can be found at:

- D.2. Public Interest Disclosure (PID) Discloser Reprisal Risk Self-Assessment
- AO.5 - PID reprisal risk assessment and plan - template

9. Witness Management – including Reprisal Risk Assessments

9.1. Legislative Requirements

9.1.1. The PID investigator may obtain information from such persons and make such inquiries as they think fit. This can include seeking further information from the discloser or any other person.

9.1.2. If the investigator decides to conduct an interview to seek specific information from a person for the purposes of the PID investigation, the person being interviewed must be informed:

- of the name of any person conducting the interview (including anyone who may be present in an assistance or record keeping capacity)
- of the function that each of the people present is performing in the investigation
- that the principal officer is required to investigate a disclosure to establish whether there has been disclosable conduct
- of the legal authority for the investigator to conduct the investigation (for example, where the principal officer's investigative function under the PID Act has been delegated)
- of general information about the process of conducting a PID investigation, including the confidentiality of investigative processes and protection of the discloser's identity.

9.2. Witness Reprisal Risk Assessments

9.2.1. The person being interviewed should also be advised of the protections they have under the PID Act in relation to the information they provide at the interview.

9.2.2. In summary, the Act provides immunities for giving information or producing a document (or other thing), or answering an investigator's question, if they consider the information or answer they

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provide to be relevant to an investigation. Protections against reprisal under the PID Act also apply to witnesses.

9.2.3. Where appropriate, witnesses should be asked to complete a reprisal risk assessment. The investigator should send the Witness Reprisal Risk Assessment templates on behalf of the POD. This is incorporated into the Request for Interview template.

9.2.4. If returned, the Witness Reprisal Risk Assessments should be assessed as with the Discloser Reprisal Risk Assessments (see 6.2 above).

9.3. Managing Witness Requests

6.2.10. Where staff have participated in PID investigations as a witness, it can be an anxious time. On occasions witnesses seek an update after a report reaches its final stages or seek updates on the progress of an investigation. The template below advises that we are unable to provide specific information to witnesses.

9.4. Templates

6.2.11. The following templates are relevant:

- POD.4 - PID Request for Interview Template – internal PID investigation
- PO.1 – General Request for Information Regarding a PID
- W.1 – Witness PID Reprisal Risk Assessment
- PID Email template - To WITNESS - request post investigation finalisation outcome and or update.

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