

Harbour Trust



Australian Government
Sydney Harbour Federation Trust



Public Interest Disclosure (PID) Procedures

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Public Interest Disclosure (PID) Procedures

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Public Interest Disclosure (PID) Procedures

I, Janet Carding, Executive Director of the Sydney Harbour Federation Trust, establish these Procedures under section 59 of the *Public Interest Disclosure Act 2013* (the PID Act).

These Procedures come into effect on 14 October 2022, and from that date replace the Procedures dated March 2014.



Janet Carding

6 October 2022

1. Purpose

The purpose of this procedure is to provide a framework for the reporting and management of a protected interest disclosure (**PID**) in accordance with the *Public Interest Disclosure Act 2013 (PID Act)*.

2. Scope

This procedure applies to all current and former public officials.

3. References

- *Public Interest Disclosure Act 2013*
- *Public Interest Disclosure Standard 2013*

4. Definitions

What is a Public Interest Disclosure (PID)?

A disclosure of information by a current or former public official to an authorised recipient may be a public interest disclosure. The information must tend to show, or the discloser must believe on reasonable grounds that it tends to show, one or more instances of disclosable conduct. What constitutes 'disclosable conduct' is discussed further on in this section.

Internal disclosure

The most common type of public interest disclosure is an internal disclosure. An **internal** disclosure by a current or former public official of the Harbour Trust may be made to:

- the Commonwealth Ombudsman,
 - an 'Authorised Officer' of the Harbour Trust (see below), or
 - the current public official's supervisor.
-

External and emergency disclosure

In limited circumstances, a public official may disclose such information to a person outside government – this is known as an **external** disclosure or an **emergency** disclosure.

A public official can only make an **external** disclosure if they have first made an internal disclosure which included the same information, and either:

- the investigation of that internal disclosure was not completed within the required timeframe (including any extensions – see further below),
- the discloser believes, on reasonable grounds, that the investigation was inadequate, or
- the discloser believes, on reasonable grounds, that the response to the investigation was inadequate.

Other criteria referred to in section 26(1) of the PID Act must also be met to make an external disclosure.

Note: A public official may only make an **emergency** disclosure to any person (other than a foreign public official) if they believe on reasonable grounds that the information concerns a substantial and imminent danger to either health and safety or the environment. Again, other criteria referred to in section 26(1) of the PID Act must be met to make an emergency disclosure.

Legal Practitioner disclosures

If a public official wishes to seek legal advice about a disclosure they have made or wish to make, they may make a **legal practitioner disclosure** to an Australian legal practitioner. However:

- the information disclosed may only include information that is subject to a national or protective security classification if the legal practitioner holds an appropriate security clearance, and
- the information disclosed cannot include any intelligence information.

What is disclosable conduct?

In summary, disclosable conduct is conduct by an agency, by a public official or a contracted service provider for a Commonwealth contract that:

- contravenes a law of the Commonwealth, a State or a Territory,
- occurs in a foreign country, and contravenes an applicable law of that country that corresponds to a law in force in the Australian Capital Territory,
- perverts, or attempts to pervert, the course of justice or involves corruption of any other kind,
- constitutes maladministration, including conduct that:
 - is based on improper motives,
 - is unreasonable, unjust or oppressive, or
 - is negligent,
- is an abuse of public trust,

- is fabrication, falsification, plagiarism or deception in relation to scientific research, or misconduct in relation to scientific analysis, evaluation or advice,
- results in the wastage of public money or public property, or the money or property of a 'prescribed authority' (the Trust is a 'prescribed authority'),
- unreasonably results in a danger to the health and safety of a person or unreasonably results in, or increases, the risk of a danger to the health and safety of a person,
- results in a danger to the environment or results in, or increases, the risk of a danger to the environment, or
- is engaged in by a public official and either:
 - involves abuse of the public official's position, or
 - could, if proven, give reasonable grounds for disciplinary action against the public official.

Additional types of disclosable conduct may be prescribed by the 'PID Rules' (pursuant to section 83 of the PID Act). At the time these procedures were established there were no additional types of disclosable conduct prescribed by the PID Rules.

It does not matter whether disclosable conduct occurred before or after 15 January 2014 (when the PID Act commenced).

It does not matter whether the public official who is alleged to have carried out the conduct has since ceased to be a public official, but it is necessary that they carried out the conduct in connection with their position as a public official. If the person is (or was) a public official because they were a contractor or subcontractor, the conduct must have been in connection with entering into, or carrying out, a contract with the Commonwealth or a prescribed authority (such as the Trust).

What is not disclosable conduct?

While they might sometimes amount to disclosable conduct, individual grievances or workplace conflicts would generally be more appropriately dealt with by other existing agency and public sector mechanisms than be the subject of investigation under the PID Act. For these types of grievances, Trust employees are encouraged to contact their manager or supervisor, their Director or the Manager People & Culture.

Generalised allegations which do not identify any specific conduct will usually not amount to information that tends to show an instance of disclosable conduct.

Conduct that is wholly private and has no bearing on the position as a public official is not disclosable conduct. Matters that reflect private or personal interest are generally not matters of public interest. Conduct is not disclosable conduct if it relates only to:

- a Commonwealth government policy or proposed policy;
- an action or proposed action by a Minister, the Speaker of the House of Representatives or the President of the Senate; or
- expenditure or proposed expenditure related to such policy or action (s 31).

5. Key Roles, Responsibilities and Obligations

Public Officials

All Harbour Trust employees have an obligation as part of their employment to report reasonable suspicions of serious wrongdoing by another public official. Contractors and service providers may have similar obligations under the terms of their contract with the Trust.

A public official may choose to report these concerns through making an internal public interest disclosure. However, they may alternatively use other reporting pathways, such as raising it with the Manager People & Culture, or their supervisor, manager or Director.

A person must be a current or former 'public official' to make a public interest disclosure. The full definition of a public official can be found in section 69 of the PID Act. In the context of the Harbour Trust, public officials relevantly include:

- all employees of the Harbour Trust
- contracted service providers (including subcontractors) and their employees
- officer holders, such as the Executive Director, the Chair and other members of the Board.

Volunteers at the Harbour Trust are not public officials (unless they are a public official in another capacity).

When the Principal Officer is conducting an investigation into an internal disclosure (see below), public officials have an obligation under the PID Act to use their best endeavours to assist the Principal Officer.

Principal Officer

The Executive Director of the Harbour Trust, **Janet Carding**, is the Harbour Trust's 'Principal Officer' for the purposes of the PID Act. As Principal Officer, the Executive Director has specific responsibilities that include establishing these procedures, investigating and providing reports on disclosures and ensuring that appropriate action is taken in relation to recommendations arising from an investigation. These are detailed in the procedures below.

The Executive Director may delegate any or all of these functions or powers to another public official in the Harbour Trust.

Authorised Officers

The key responsibility of an Authorised Officer is to receive internal disclosures from current or former public officials. When they receive a potential internal disclosure, an Authorised Officer has a responsibility to conduct an initial assessment as to whether an internal disclosure has been made, and then make a decision about which agency to allocate handling of the disclosure, and then issue notifications about this decision. These obligations are detailed in the procedures below.

The Authorised Officer may also support the Principal Officer in performing their responsibility, for example, by conducting reprisal risk assessments.

The Harbour Trust has three Authorised Officers:

- **Janet Carding** (Executive Director) (in addition to being the Principal Officer)

The Principal Officer has appointed the following Authorised Officers:

- **Daniel Sealey** (Director - Planning)
- **Graham Izod** (Director – Assets and Parklands)

Supervisors

A public official may make an internal disclosure to their supervisor. In the context of the PID Act this means anyone who ‘manages or supervises’ the public official. This includes a public official’s direct or formal supervisor, and may also extend to other public officials who manage their work.

Where a supervisor receives a disclosure, they have specific obligations to record the disclosure and provide it to an Authorised Officer. These are detailed in the procedures below.

6. Procedures

A. How to make a disclosure

Under the PID Act there is no required format for the making of a disclosure:

- a public interest disclosure may be made anonymously or openly,
- a public interest disclosure may be made orally or in writing,
- to make a public interest disclosure, there is no requirement to state or intend that the disclosure is made under the PID Act.

The Harbour Trust encourages public officials to make any disclosures to an Authorised Officer, where possible. This is because an Authorised Officer is trained to receive public interest disclosures and can provide information on the process to make a disclosure and the protections given to disclosers under the PID Act.

Disclosures can also be made to supervisors under the PID Act, who will then be required to forward the disclosure to an Authorised Officer.

Information contained in the disclosure should be clear and factual, and should, as far as possible, avoid speculation, personal attacks and emotive language. It should contain supporting evidence where that is available to the discloser and should, where possible, identify any witnesses to the disclosable conduct.

A potential discloser should not investigate a matter themselves before making a disclosure.

Anonymous disclosures

Public officials can make anonymous disclosures if they wish to do so. A disclosure is considered to be anonymous if:

- The identity of the discloser is not revealed and if no contact details for the discloser are provided;
or
- The discloser does not disclose their name but does provide anonymous contact details.

However if a disclosure is made anonymously and no contact details are provided:

- the Authorised Officer and Principal Officer may be unable to provide notifications and updates to the discloser; and
- the Principal Officer may be unable to investigate the disclosure, or limited in how they can investigate the disclosure.

Withdrawing a disclosure

Once a public interest disclosure has been made, it cannot be withdrawn. A discloser may state that they do not wish the disclosure to be investigated and they may refuse to consent to their name and contact details being provided to the Principal Officer. However, even if the discloser states that they do not wish for the disclosure to be investigated, the Principal Officer may only stop investigating if reasonably satisfied that there are no matters concerning the disclosure that warrant investigation.

Confidentiality

A person who has made a disclosure under the PID Act should not discuss the details of their disclosure with anyone who does not have a need to know about it. Discussions with these people will not be protected by the PID Act, and may undermine steps by the Harbour Trust to protect the discloser's identity and from reprisal action or threatened reprisal action.

Arrangements for the confidentiality of disclosure investigations, and protections for the disclosers are set out in more detail below.

B. Procedures for supervisors

If:

- a public official discloses information to their supervisor, and
- the supervisor has reasonable grounds to believe that the information concerns disclosable conduct; and
- the supervisor is not themselves an Authorised Officer

then the supervisor must, as soon as practicable, provide the information to an Authorised Officer.

When this occurs, the supervisor should:

- take a written record of the facts of the disclosure, including the time and date of the disclosure, as well as their best assessment of any risks that reprisal action might be taken against the discloser
- seek the consent of the discloser to include their name and contact details in the written record to be provided to an Authorised Officer
- where possible, have the discloser sign the written record, or otherwise record their agreement that it is accurate

- advise the discloser that they are going to (and are required to) provide the written record to an Authorised Officer
- provide the Authorised Officer's name and contact details to the discloser.

Supervisors must treat disclosures with the highest degree of confidentiality. In most circumstances, the supervisor should only speak to the discloser and an Authorised Officer about the disclosure.

C. Procedures for authorised officers

Receiving disclosures

Authorised Officers have specific responsibilities in relation to advising disclosers and potential disclosers about the PID Act.

Where:

- a person discloses, or is proposing to disclose, information to an Authorised Officer which the Authorised Officer has reasonable grounds to believe may be disclosable conduct, and
- the Authorised Officer has reasonable grounds to believe that the person may be unaware of what the PID Act requires for the disclosure to be an internal disclosure, and
- the Authorised Officer is aware of the contact details of the person,

then the Authorised Officer must:

- inform the person that the disclosure could be treated as an internal disclosure under the PID Act,
- explain to the person what the PID Act requires for a disclosure to be an internal disclosure,
- explain to the person the protections provided by the PID Act to persons who make disclosures under the Act, and
- advise the person of any orders or directions that may affect disclosure of the information.

Where a current or former public official makes a disclosure of disclosable conduct directly to an Authorised Officer, the Authorised Officer should:

- make a written record of the fact of the disclosure,
- ask the discloser to sign the written record of the disclosure (or otherwise record that they agree that the written record is accurate), where this is practicable, and
- ask the discloser if they consent to their name and contact details being provided to the Principal Officer and to the Ombudsman, where this is practicable.

Allocating disclosures

Where a disclosure has been made to an Authorised Officer, or to a Supervisor who then gives the disclosure to an Authorised Officer, the Authorised Officer must use their best endeavours to decide on the allocation of the disclosure within 14 days of the disclosure being made or given to them.

Making an allocation decision

The Authorised Officer must decide which agency to allocate the disclosure to. The Principal Officer of that agency will decide if an investigation is required, and conduct any investigation. Generally, the Authorised Officer should allocate the disclosure to the agency that the conduct alleged in the disclosure relates to. Conduct relates to an agency if the agency or a public official belonging to that agency engaged (or are alleged to have engaged) in the conduct.

The Authorised Officer can only allocate the disclosure to a different agency (i.e. not the Harbour Trust) if they have first obtained the consent of an Authorised Officer of that agency.

When the Authorised Officer makes an allocation decision, they must make and keep an appropriate written record of:

- the decision (including the name of the agency the disclosure was allocated to); and
- the reasons for the decision; and
- if consent was required — the consent of the agency to which the allocation is made.

Notification of allocation decision

As soon as reasonably practicable after making the allocation decision, the Authorised Officer must give a notice to the discloser of the allocation decision. The Authorised Officer must also make a record of the time and date of the notification, means of the notification and content of the notification.

When issuing this notification the Authorised Officer should also:

- seek the discloser's consent to provide their name and contact details to the Principal Officer and the Ombudsman (unless they have already obtained this, or the discloser has already refused consent); and
- provide the discloser with information about the Principal Officer's powers to decide to not investigate the disclosure, decide to not investigate the disclosure further, or decide to investigate the disclosure under a separate investigative power.

However, this does not apply if it is not reasonably practicable to contact the discloser (for example, if the Authorised Officer does not have their contact details).

The Authorised Officer must also give notice to the Principal Officer of:

- the allocation to the agency
- the information that was disclosed
- the suspected disclosable conduct (if any); and
- if known and the discloser consents — the discloser's name and contact details.

The Authorised Officer must also give notice of these matters to the Ombudsman. This should be in the form of a completed 'Notification of allocation' form, available on the Ombudsman website.

Deciding to not allocate a disclosure

The Authorised Officer may decide to not allocate a disclosure if they are satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered to be an internal disclosure. This may be because they are satisfied that:

- that the disclosure has not been made by a person who is, or was, a public official;
- that the disclosure was not made to an authorised internal recipient or supervisor;
- that the information disclosed does not 'tend to show' disclosable conduct, and the discloser could not have believed, on reasonable grounds, that the information 'tends to show' disclosable conduct;
- that the person who is alleged to have carried out the disclosable conduct was not a public official at the time they are alleged to have carried out that conduct; or
- if the information is about the conduct of a public official (or officials) who is a contractor or subcontractor, that the alleged conduct is not connected to entering into, or the performance of, a contract with the Commonwealth or Commonwealth entity (such as the Harbour Trust).

Notification of decision to not allocate

If the Authorised Officer decides to not allocate the disclosure, unless it is not reasonably practical to contact the discloser, they must inform the discloser of:

- the reasons for their decision; and
- any other courses of action that might be available to the discloser under other laws of the Commonwealth.

Inquiries by the Authorised Officer

When deciding whether to allocate a disclosure, or which agency to allocate the disclosure to, the Authorised Officer may obtain information from such persons, and may make such inquiries, as they see fit. This may include, for example, seeking information to establish if the discloser is or was a public official. However, it is not the role of the Authorised Officer to investigate the allegations in the disclosure.

Deeming an individual to be a 'public official'

If a person who is not a public official makes a disclosure to an Authorised Officer (or proposes to make a disclosure to an Authorised Officer), the Authorised Officer may deem the person to be a public official. The Authorised Officer may only do this if they reasonably believe that the person has information that concerns disclosable conduct. The Authorised Officer is not required to deem a person to be a public official.

To deem a person to be a public official, the Authorised Officer must give the person a written notice of their decision.

Anonymous disclosures

When an Authorised Officer receives an anonymous disclosure, they must consider if they have sufficient evidence to be satisfied that the discloser is or was a public official. This might include, for example, evidence of the discloser's current or former employment as a public official.

It is not necessary for the discloser to prove beyond all doubt that they are (or were) a public official. The Authorised Officer should consider that the discloser is (or was) a public official unless the balance of evidence indicates otherwise.

If it is unclear if an anonymous discloser is a public official, the Authorised Officer may consider whether to deem the discloser to be a public official, under section 70 of the PID Act. However, the Authorised Officer can only do this if they have contact details for the discloser, so that they can issue the written notice.

D. Reprisal risk assessments

The Principal Officer has an obligation to protect public officials in the Harbour Trust from detriment, or threats of detriment, relating to making a public interest disclosure. An Authorised Officer may assist the Principal Officer in complying with this obligation, including by conducting reprisal risk assessments.

Reprisal means where someone causes, by act or omission, detriment to a person because they believe or suspect that person has made, may have made, or proposes to make a disclosure.

A reprisal risk assessment should be conducted at the following stages in a disclosure:

- If a disclosure is made to a supervisor, the supervisor will need to assess any risks in the immediate work area and report these to an Authorised Officer. There may be steps which can be taken immediately to protect the discloser, for example, moving the discloser to alternative duties or another location.
- When a disclosure is made to an Authorised Officer, or is given to an Authorised Officer by a supervisor in accordance with section 60A of the PID Act, the Authorised Officer should conduct a (further) risk assessment.
- The Authorised Officer will need to conduct further risk assessments as the matter progresses — for example, if the matter is being investigated, and it is necessary to reveal that there has been a disclosure to witnesses or the person who is the subject of the disclosure.
- Once the investigation has concluded, the Authorised Officer will need to continue to monitor the situation and address any risks which might arise.

The first risk assessment should be completed as soon as possible after the disclosure has been made.

Conducting a risk assessment

There are four stages in conducting a risk assessment:

- Identify
- Assess
- Control
- Monitor and review

Identify

In identifying any risks, the Authorised Officer will need to consider:

- protecting the discloser's identity
- protecting the discloser from any reprisal action.

It is important to consider the specific behaviour and the circumstances which might result in reprisals.

When identifying risks, the Authorised Officer should consult the discloser and their supervisor or manager, if relevant.

A risk assessment should still be conducted where the disclosure has been made anonymously.

Assess

As part of the risk assessment, it is important to assess:

- the likelihood of any reprisal action occurring
- the potential consequences of any reprisal action.

Control

The Authorised Officer should consider and make recommendations to the Principal Officer about effective controls to address any identified risks, for example:

- Recommending that the discloser be moved to alternative duties, or an alternative location
- Recommending that any other person be moved to alternative duties, or an alternative location
- Reinforcing behavioural expectations and the consequences of any real or perceived reprisal action to people involved in the matter
- In exceptional circumstances, considering whether it is appropriate to recommend that miscellaneous or discretionary leave be offered to any of the individuals involved in the matter.

Where the discloser has provided consent to the Authorised Officer for their identity to be disclosed to the Principal Officer, there are some circumstances in which the discloser's identity can and will need to be disclosed further. It is good practice to seek the discloser's consent before disclosing their identity further, however there may be some situations where it is not possible to do so. A discloser's identity will only be disclosed where it is necessary and authorised by the PID Act.

It is important to consider appropriate, targeted strategies to prevent or contain the particular risk which has been identified.

Monitor and Review

Additional risk assessments may be required as the PID investigation progresses, for example, as more people become aware of the disclosure. There may also be ongoing risks after the investigation has been completed.

It is important that the Authorised Officer continues to monitor the situation closely.

Appendix 3 is a model risk assessment and management plan template, which the Authorised Officer will apply, so far as it is appropriate to the circumstances of each disclosure.

E. Procedures for the Principal Officer

Initial information for the disclosers

If the disclosure is allocated to the Harbour Trust from the Ombudsman or another agency (and so this information has not already been provided by the Authorised Officer) then the Principal Officer must ensure that the discloser is provided with information about the Principal Officer's powers to:

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

The Principal Officer must ensure that, where it is reasonably practicable to do so, the above information is provided within 14 days after the disclosure is allocated to the Trust.

Deciding whether or not to investigate

The Principal Officer must, as soon as reasonably practicable, consider whether to exercise the discretion under section 48 of the PID Act not to investigate the disclosure under the PID Act. The decision **not** to investigate can be based on:

- the discloser is not a current or former public official (and a determination has not been made under section 70 of the PID Act), or
- the information does not to any extent concern serious disclosable conduct, or
- the disclosure is frivolous or vexatious, or
- the disclosure is substantially the same as a disclosure that is being, or has been, investigated under the PID Act, or
- the conduct (or substantially the same conduct) is currently being investigated under another law, or the executive power, of the Commonwealth and it would be inappropriate to conduct another investigation at the same time
- the conduct (or substantially the same conduct) has already been investigated under another law, or the executive power, of the Commonwealth and the Principal Officer is reasonably satisfied that there are no matters that warrant further investigation
- the discloser has stated that they do not wish the disclosure to be investigated and the Principal Officer is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation, or

- it is impracticable to investigate the disclosure because:
 - the discloser has not revealed their name and contact details, or
 - the discloser has refused or has failed or is unable to give the Principal Officer information they requested, or
 - of the age of the information.

Notification of decision to not investigate

Where the Principal Officer decides **not to investigate** a disclosure they must, as soon as reasonably practicable:

- inform the Ombudsman of that decision, and of the reasons for that decision, and
- where they have been given the name and contact details of the discloser — inform the discloser of that decision, of the reasons for that decision and of other courses of action that may be available to the discloser under other laws of the Commonwealth.

Notification of requirement to investigate

Where the Principal Officer has decided that they are required **to investigate** the disclosure, and where they have been given the name and contact details of the discloser, the Principal Officer must notify the discloser that:

- the Principal Officer is required to investigate the disclosure, and
- the estimated length of the investigation.

F. Procedures for investigations

Where the Principal Officer has decided to commence an investigation into an internal disclosure, they may conduct the investigation as they think fit.

The Principal Officer may:

- investigate the matter themselves
- request assistance from one or more public officials
- appoint an investigator to investigate the disclosure, and/or
- delegate their powers and functions to a delegate (who must be a public official belonging to the Trust) for the purposes of the investigation.

The Principal Officer, investigator and/or delegate must be independent and unbiased in the matter. They must ensure that they do not have an actual or perceived conflict of interest.

The Principal Officer, investigator and/or delegate may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as they think fit. They must also ensure that a decision whether evidence is sufficient to prove a fact is made on the balance of probabilities.

In conducting an investigation under these procedures, the Principal Officer, investigator and/or delegate must also comply with:

- the *Public Interest Disclosure Standard 2013*, and
- to the extent they are relevant to the investigation — the Commonwealth Fraud Control Guidelines.

Interviewing witnesses

Subject to any restrictions imposed by a law of the Commonwealth other than the PID Act, the Principal Officer, investigator and/or delegate must ensure that, if a person is interviewed as part of the investigation of an internal disclosure, that person is informed of:

- the identity and function of each person conducting the interview, and
- the process of conducting an investigation, and
- the authority of the investigator under the PID Act to conduct the investigation, and
- the protections provided to the person by section 57 of the PID Act.

The Principal Officer, investigator and/or delegate, should also ensure that the witness is made aware of their obligations:

- if they are a public official — to use their best endeavours to assist the investigator in the conduct of an investigation under the PID Act, and
- not to take, or threaten to take, reprisal action against the discloser, and
- to protect the identity of the person who made the disclosure.

Where the investigator conducts an interview as part of an investigation, at the end of the interview, the interviewee must be given an opportunity to make a final statement or comment or express a position. The investigator must include any final statement, comment or position in the record of the interview.

Procedural fairness

Procedural fairness does not require that a person against whom allegations are made must be advised as soon as the disclosure is received or as soon as an investigation is commenced.

Procedural fairness may require that the discloser's identity be revealed to the person who is the subject of the disclosure, but only if this is necessary to afford the person a proper opportunity to respond to a potential adverse finding. If it is necessary to reveal the identity of the discloser, the subject of the disclosure must be reminded of the prohibitions against reprisal action and the use or disclosure of identifying information (see below).

If and when the Principal Officer, investigator and/or delegate reaches a preliminary view that the investigation may make an adverse finding about a person, the person is entitled to:

- know the substance of the allegation and the evidence against them; and
- have a reasonable opportunity to respond to the allegation and evidence.

The investigator must ensure that a finding of fact in a report of an investigation under the PID Act is based on logically-probative evidence.

Time limits

The Principal Officer has **90 days** (from the date of allocation of the disclosure to the Trust) in which to complete the investigation.

The Principal Officer may seek one or more extensions of time from the Ombudsman. A request to the Ombudsman for an extension of time should be made where an investigation has not been completed within 20 days of the current deadline for the investigation to be completed. The application for extension should include reasons why the investigation cannot be completed within the time limit, the views of the discloser and an outline of action taken to progress the investigation.

An investigation that is not completed within time does not become invalid.

G. Reports of investigations

In preparing a report of an investigation under the PID Act the investigator must comply with the PID Act, the PID Standard and these procedures.

A report of an investigation under the PID Act must set out:

- the matters considered in the course of the investigation, and
- the duration of the investigation, and
- the Principal Officer's findings (if any), and
- the action (if any) that has been, is being or is recommended to be taken, and
- any claims made about, and any evidence of, detrimental action taken against the discloser, and the Trust's response to those claims and that evidence.

Where relevant, a report must:

- identify whether there have been one or more instances of disclosable conduct, and
- identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates, and
- explain the steps taken to gather evidence, and
- set out a summary of the evidence, and
- set out any recommendations made based on that evidence.

The Principal Officer must, within a reasonable time after preparing a report of an investigation under the PID Act, give a copy of the report to the discloser. However, this does not apply if contacting the discloser is not reasonably practicable.

The Principal Officer may delete from the copy of the report given to the discloser any material:

- that is likely to enable the identification of the discloser or another person, or
- the inclusion of which would result in the copy being a document:
 - that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982*, or
 - having, or being required to have, a national security or other protective security classification, or
 - containing intelligence information,
- which would result in the report contravening a designated publication restriction.

H. Confidentiality and protections for disclosers

General processes

The investigation of the disclosure should be conducted in as confidential a manner as is possible. In particular, the identity of both the discloser and the person alleged to have engaged in the disclosable conduct should not be revealed except where this is reasonably necessary for the effective investigation of the disclosure (including because of the need to afford procedural fairness).

Any email correspondence between supervisors or managers, Authorised Officers and Principal Officers should include in the subject line **For Addressee Eyes Only – Public Interest Disclosure**. This alerts any support staff who may have access to emails that this email is not to be opened.

Any interviews conducted in the course of an investigation should be conducted in private.

Any interviews with the discloser should be arranged so as to avoid the identification of the discloser by other staff of the agency.

When referring to involved parties they should be referred to as the ‘discloser’ and the ‘subject person’.

Protections for disclosers

The PID Act provides strong protection for disclosers, including:

- protection of their identity
- immunity from civil, criminal or administrative liability for making the disclosure
- support and protection from reprisal
- recourse to court for remedies for any reprisal action.

Protection of the identity of disclosers

The PID Act contains protections in relation to information that would enable a discloser to be identified (called ‘identifying information’). It is a criminal offence for any person who has obtained identifying information to use that information or disclose that information to another person (other than the discloser), unless an exception applies. An exception will apply if:

- the disclosure or use is for the purposes of the PID Act, or another law of the Commonwealth; or
- the discloser has consented to the use or disclosure of the identifying information.

Protection of information obtained under the PID Act

The PID Act contains restrictions on the use or disclosure of information obtained during a PID investigation or while performing another function or exercising another power under the PID Act.

If a person has information that they obtained:

- while conducting a PID investigation, or
- while performing a function or exercising a power under the PID Act,

then this information is 'protected information' for the purposes of the PID Act - this will include:

- information disclosed to an Authorised Officer or a supervisor (i.e. the contents of any disclosure),
- information obtained by an Authorised Officer in order to make an allocation decision, or perform other parts of their role,
- information obtained by a Principal Officer in order to make a decision about whether to investigate a disclosure,
- information obtained by a Principal Officer in the course of investigating a disclosure, and
- information obtained by a public official who is assisting the Principal Officer with an investigation (including but not limited to a public official who has been appointed as a delegate or investigator).

It is a criminal offence under section 65(1) of the PID Act for a person who has obtained 'protected information' in the course of conducting a disclosure investigation (or while performing a function or exercising another power under the PID Act) to use or disclose this information, unless an exception in subsection 65(2) applies. The exceptions are:

- the use or disclosure is for the purposes of the PID Act,
- the use or disclosure is for the purposes, or in connection with, the performance of a function, or the exercise of a power, of a person under the PID Act,
- the use or disclosure is for the purposes, or in connection with, taking action in response to a disclosure investigation, and
- the protected information has previously been lawfully published, and is not intelligence information.

A separate exception applies in the context of lawfully published protected information that is intelligence information, which requires seeking the consent of the relevant intelligence agency to the proposed use or disclosure of that information.

Section 65 only applies to a person who received the information in relation to the PID Act. As such, it does not apply to a person who received the same information in a context completely separate to the PID Act, and is not performing any role or function under the PID Act.

Protections against liability for disclosers

A person who makes a disclosure in accordance with the PID Act is not liable to any civil, criminal or administrative action (including disciplinary action) taken against them for making the disclosure. Contractual or other rights also cannot be enforced against a person because they made a disclosure.

However, there are three exceptions to this. Immunity does not apply:

- where the discloser makes a statement which they know is false or misleading
- to protect a person from liability for specific offences under the Criminal Code Act 1995, namely giving false or misleading information or documents, making a false document, or using a forged document
- for making a disclosure that the discloser knew contravened a designated publication restriction, and where the discloser did not have a reasonable excuse for contravening the designated publication restriction.

In addition, if a public official makes a disclosure about their own conduct, the making of the disclosure does not protect them from liability for that conduct.

Protections from reprisal

It is a criminal offence to take reprisal action or cause detriment to a person because they have, or are suspected to have, made a disclosure. Threatening reprisal action is also a criminal offence.

Reprisal action includes:

- where a person, through an act or omission, causes detriment to another person, and
- the person who causes the detriment believes or suspects that the person or any other person made, may have made or proposes to make a public interest disclosure, and
- this belief or suspicion is the reason, or part of the reason, for the act or omission.

Detriment includes any disadvantage, for example:

- dismissal of an employee
- injury of an employee in their employment
- alteration of an employee's position to their detriment
- discrimination between an employee and other employees of the same employer.

Reprisal action does not include circumstances where a person takes administrative action that is reasonable to protect the person from detriment.

I. Support for disclosers

In addition to their other functions, the Authorised Officer is the discloser's contact person throughout the PID process. The Authorised Officer should ensure that the discloser remains updated and supported throughout the PID process.

Disclosers may be also be offered support through the Harbour Trust's EAP provider, Benestar, which can be contacted on 1300 360 364. If the discloser is not a current employee of the Harbour Trust, the

Authorised Officer may consider extending access to EAP to the discloser, depending on the particular circumstances of the disclosure and the discloser.

J. Record-keeping

Where an Authorised Officer or Principal Officer is required to keep a record under these procedures, the record may be kept in hard copy or in an electronic form or in both. Access to these records must be restricted to the Authorised Officers, Principal Officer (including delegates or appointed investigators) or other employees in the Harbour Trust who require access in order to perform some function under the PID Act. Where a discloser has provided their contact details to the Authorised Officer but declined to consent to these being provided to the Principal Officer, the Principal Officer (and other persons) should not be provided access to files containing these details.

Where a form is required to be sent under these procedures, a copy of the form must be kept.

All records made for the purposes of the PID Act in accordance with these procedures must be marked as 'in-confidence' and hard copies stored in the appropriate storage container.

Any email messages sent by supervisors or managers, Authorised Officers, the Principal Officer, or their delegates or appointed investigators that contain identifying information must be clearly marked **For Addressee Eyes Only – Public Interest Disclosure**.

K. Monitoring and evaluation

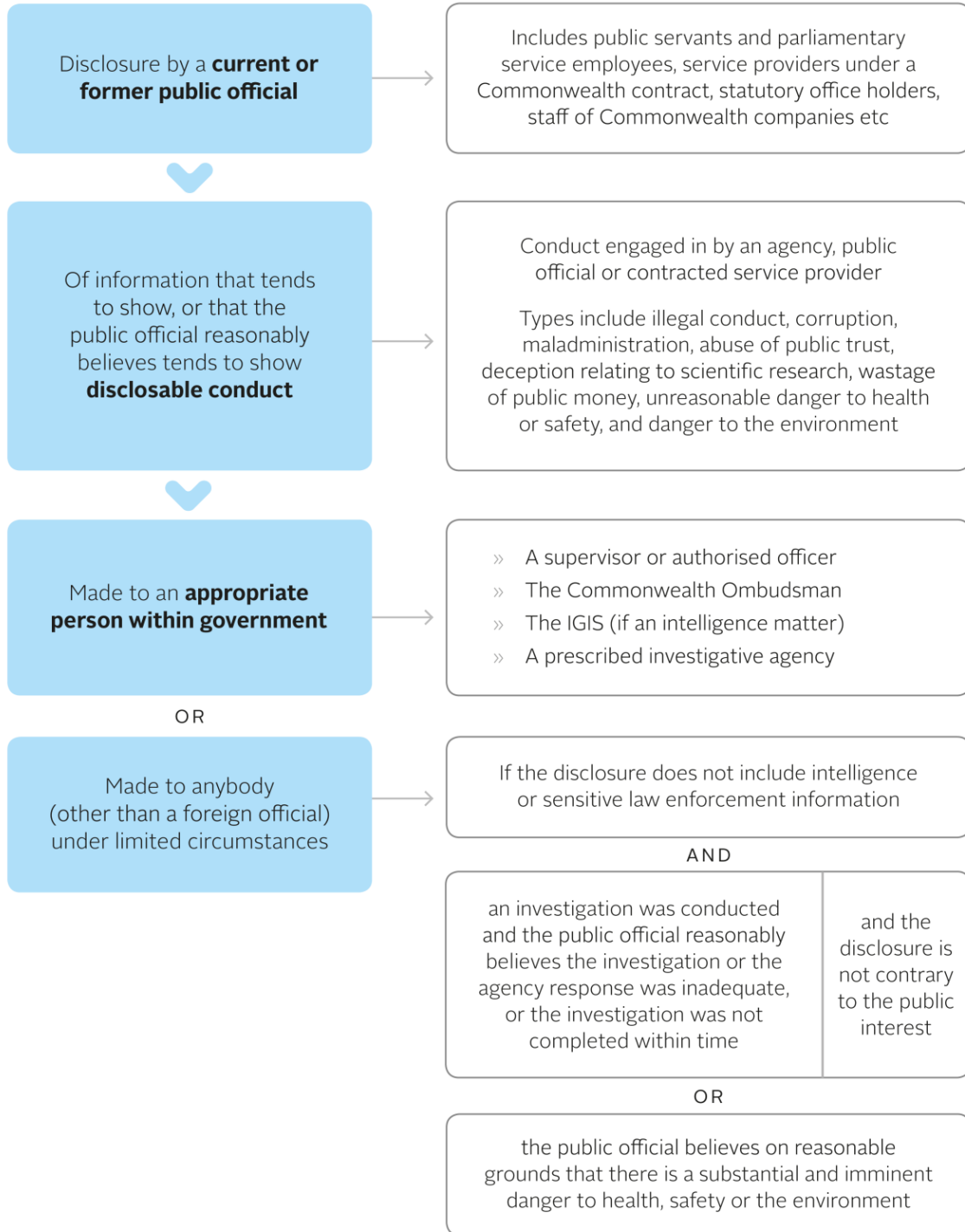
The Authorised Officer must provide a six monthly report to the Principal Officer specifying the number of public interest disclosures received and the nature of the disclosable conduct for each disclosure.

The Principal Officer will send the Agency's report to the Ombudsman within the time requested by the Ombudsman or as otherwise agreed with the Ombudsman.



Creating extraordinary places on the world's best harbour.

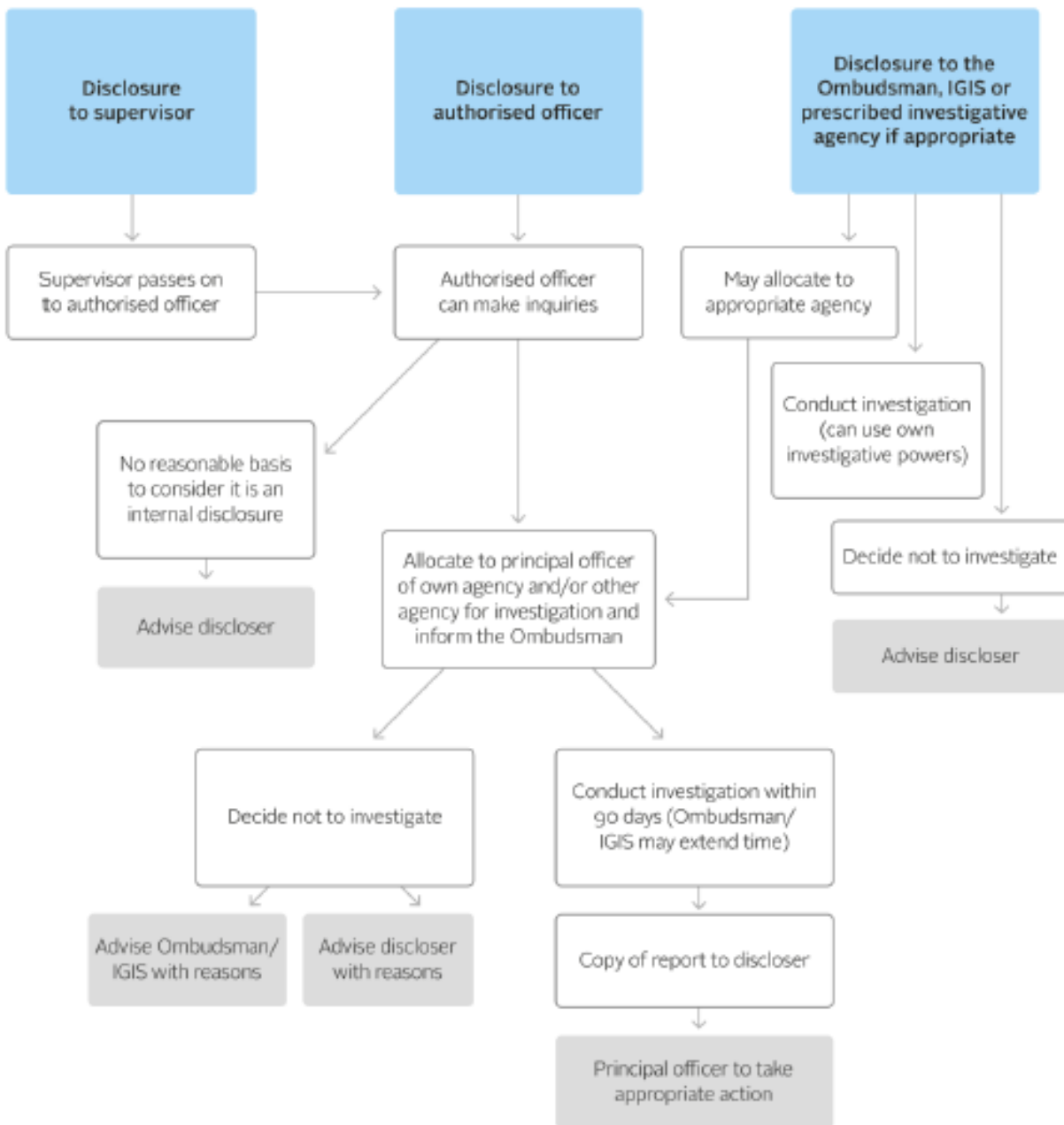
APPENDIX I: What is a Public Interest Disclosure?





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APPENDIX II: Internal Disclosure process





APPENDIX III: Model Reprisal Risk Assessment and Management Plan

Reference: PID XXXXX

Public Interest Disclosure Scheme – Reprisal risk assessment and management plan

1. Introduction

As per the Harbour Trust's Public Interest Disclosure Procedures (PID Procedures) I, as an Authorised Officer, have prepared the following reprisal risk assessment in relation to PID XXXXX.

This assessment has been conducted in accordance with the duties under s 59(1)(a) & (3)(a) of the *Public Interest Disclosure Act 2013* to have procedures for assessing risks that reprisals may be taken against the discloser, and to protect the discloser from detriment.

2. Overall assessment and conclusion

My current assessment is that the overall risk rating for reprisals against the discloser is [**low / medium / high**]. When applying the risk matrix, I assessed that the likely seriousness of reprisal is [**minor / moderate / major / extreme**] and the likelihood of a reprisal being taken against the discloser is [**highly unlikely / unlikely / likely / almost certain**].

[To be included if the Authorised Officer assessed the risk as 'low' and is satisfied that no further mitigation of risk is necessary/appropriate] As my assessment of the overall risk rating is **low**, I do not consider a specific plan to manage reprisal risks is required. However, I will review this rating during the course of the investigation, should there be a change in circumstances which modifies this rating.

[To be included if the Authorised Officer assessed the risk as 'medium' or 'high', or if the Authorised Officer otherwise consider a mitigation strategy is needed] As my assessment of the overall risk rating is [**medium/high**], I consider that a plan to mitigate the risk is required. The details of the plan to mitigate the risk is set out below in section 6. Once this plan is implemented, I assess that the likely seriousness of reprisal is [**minor/moderate/major/extreme**] and the likelihood of reprisal being taken against the discloser is [**highly unlikely/unlikely/likely/almost certain**], resulting in an overall assessment of [**low/medium/high**]. I will review the effectiveness of the plan, and any other changes in circumstances, during the investigation.

3. Relevant background

The discloser is a [current employee / former employee / current service provider / former service provider / other] of the Harbour Trust.

On [date], the discloser [Authorised Officer to briefly describe how the PID was made]. The allegation in the disclosure primarily related to [Authorised Officer to briefly describe the allegations made in the PID].

When making the disclosure, the discloser [did / did not] identify concerns about reprisal. The discloser identified the following concerns [Authorised Officer to insert, or delete if not applicable].

[Authorised Officer to include if the disclosure was made via a supervisor] The discloser originally made this disclosure to their supervisor, who then provided the disclosure to the Authorised Officer. Under the PID Procedures, where a supervisor receives a disclosure, and then provides that disclosure to an authorised officer, they should also provide their best assessment of any reprisal risk. The discloser’s supervisor provided the following assessment [Authorised Officer to insert or summarise as appropriate].

[If the Authorised Officer is conducting a review of an existing reprisal risk assessment, they are to note that here, including the date the original risk assessment was completed and any key details of other events or developments relating to the PID which have occurred since and are relevant to reprisal risk. This may include:

- communications with the discloser relevant to reprisal risk
- any reprisal action or threats of reprisal action taken/made against the discloser
- steps in the investigation which might have made other individuals aware of the disclosure or the discloser’s identity]

4. Methodology and discussion

The risk matrix used by this risk assessment is set out below.

	Likely seriousness of reprisal				
		Minor	Moderate	Major	Extreme
Likelihood of reprisal being taken against a discloser	Almost certain	Medium	High	High	High
	Likely	Medium	Medium	High	High
	Unlikely	Low	Low	Medium	Medium
	Highly unlikely	Low	Low	Low	Medium

Description and examples of seriousness of reprisals	
Minor	Occasional or one-off action that is likely to have a relatively minor adverse effect on a person (for example, occasional exclusion of the person from a social activity).
Moderate	Repeated action which is likely to have an adverse effect on the person (for example, routinely failing to “CC” the person on work related emails).
Major	Sustained or one-off action, which has a significant impact on the person (for example, consistently excluding the person from team discussions or imposing a negative performance assessment on the person).
Extreme	Action which is likely to have a very severe impact on the person (for example, physical violence or the denial of a promotion opportunity without reasonable cause).

In assessing the risk of reprisal, I have taken the following matters into account: *[Authorised Officer to consider each point below and then either complete or remove each of the points as appropriate to the disclosure, and add any additional points where necessary/relevant to their assessment]*

A. *Whether the discloser is in the workplace*

- The discloser [is / is not] a current [employee / contractor] for the Harbour Trust.
- While the discloser remains an [employee / contractor] for the Harbour Trust, they are currently not in the workplace due to [leave / suspension / other], which commenced on [date] and is predicted to continue until [insert].

B. *Relationship to individuals named in disclosure*

- I consider that the disclosure makes allegations against the following individuals:
 - *[Authorised Officer to list individuals who are the subject of the allegations in the disclosure]*
- The relationship between the discloser and [insert] is [insert, eg supervisor / manager / co-worker]. *[Authorised Officer to repeat for each person listed under the point above]*
- *[Authorised Officer to include any other known details regarding the relationship between the discloser and the individual(s) who are the subject of the disclosure, e.g. any known relationship outside of work, whether they are physically located in the same office, whether they are in each other's reporting lines or have managers or staff in common]*
- *[Authorised Officer to assess whether the subjects of the allegations will have the opportunity to take reprisals (eg, because they have power over the discloser)]*

C. *Confidentiality of discloser's identity*

- Based on currently available information, the discloser [has / has not] told other people in the workplace they have made the disclosure. *[If yes, Authorised Officer to set out details]*
- Based on currently available information, the discloser [has / has not] previously raised the subject matter of the disclosure with other people in the workplace. *[If yes, Authorised Officer to set out details]*
- The following people know the disclosure has been made (or was going to be made):
 - *[Authorised Officer to list individuals who are aware the disclosure was made]*
- It is [likely / unlikely] that the discloser will discuss their disclosure with other people in the workplace. *[Authorised Officer to insert reasons for assessment]*
- If the subject matter of the disclosure is revealed it [will / will not] make the discloser's identity ascertainable because *[Authorised Officer to insert, taking into account whether there is anything about the discloser or the allegations which would make their identity obvious from the allegations, e.g. allegations relating to a small team or an event with limited attendees, allegations involving knowledge only a limited number of people could have]*
- To my current assessment, to investigate the disclosure it [will / will not] be necessary to reveal the subject of the disclosure [and/or] identity of the discloser to *[Authorised Officer to insert any individuals identified in B, above]*

D. Known threats made or reprisal action taken against the discloser (or any other history of conflict)

- There currently [are / are not any] known threats of reprisal action made against the discloser. *[if yes, Authorised Officer to insert details]*
- There currently [is / is not any] known reprisal action that has been taken against the discloser. *[if yes, Authorised Officer to insert details]*
- There [is / is not] a history of reprisals or other conflict between the discloser and [the individual(s) named in the disclosure]. *[if yes, Authorised Officer to insert details, including their assessment of whether it is likely that this disclosure will exacerbate the conflict]*

E. Vulnerability of the discloser

- The reported wrongdoing [was / was not] directed at the discloser.
- The discloser is a [casual employee / contractor] who does not have guaranteed work. [insert individual] has authority to reduce the discloser's hours.
- The discloser is isolated from support in the workplace due to *[insert, eg, irregular working hours, work location]*.

F. Significance of alleged disclosable conduct

- I have had regard to the following further considerations. *[Authorised Officer to delete or expand on the following as appropriate]*
 - The allegations in the disclosure [are / are not] about [an individual / individuals].
 - There [is / is not] more than one wrongdoer involved in the matter. *[Authorised Officer to consider whether there is any relationship between the alleged wrongdoers and whether that might increase reprisal risks]*
 - *[Authorised Officer to assess if there are close professional or social associates of the alleged wrongdoer(s) within the workplace (and if there any risk of them taking reprisal action against the discloser)]*
 - The reported alleged wrongdoing allegedly [occurred frequently / did not occur frequently / was a one of incident]
- For the purposes of assessing reprisal risk (and noting that it is not my role to investigate the disclosure) I consider that the disclosure [does / does not] involve allegations of significant wrongdoing. *[Authorised Officer to give reasons and consider, for example, if the allegations (if proven) could result in significant disciplinary action]*
- The disclosure [is / is not] particularly sensitive or embarrassing for [the alleged wrongdoer / senior management / the Harbour Trust / the other government body]. *[Authorised Officer to give reasons for assessment]*
- The alleged wrongdoer [has / does not have] a motivation to take or threaten reprisal action. *[Authorised Officer to give reasons for assessment]*

5. **Assessment**

Taking all of the above matters into consideration, my current view is that the likelihood of reprisal being taken against the discloser is [**highly unlikely / unlikely / likely / almost certain**] because:

- *[Authorised Officer to summarise reasoning, having regard to the above]*

My current view is that the seriousness of any potential reprisals is [minor / moderate / major / extreme], because:

- *[Authorised Officer to summarise reasoning, having regard to the above]*

As such, applying the risk matrix above, my overall assessment is that the reprisal risk is [low / medium / high].

6. Risk Mitigation Plan *[to be included if the risk is 'medium' or 'high', or where the risk is 'low' but there are readily available measures to further reduce the risk]*

I consider that the following measures should be implemented to reduce the likelihood of any reprisal occurring:

- *[Authorised Officer to insert proposed measures. Without limitation, these may include: measures to keep the discloser's identity confidential, measures to separate the discloser and individuals who are the subject of the disclosure, and (where appropriate) making the alleged wrongdoer aware of the serious criminal penalties for taking reprisal action]*

If these measures are implemented, I consider the likelihood of reprisal being taken against the discloser will reduce from [highly unlikely / unlikely / likely / almost certain] to [highly unlikely / unlikely / likely / almost certain].

I consider that the following measures should be implemented to reduce the seriousness of any potential reprisals that occur:

- *[Authorised Officer to insert proposed measures. Without limitation, these may include measures to support the discloser if any reprisal action does occur, such as dedicated reporting mechanisms, regular check-ins by the Authorised Officer or another person, or access to the Harbour Trust's EAP provider]*

If these measures are implemented, I consider the potential seriousness of any reprisal that is taken will reduce from [minor / moderate / major / extreme] to [minor / moderate / major / extreme].

As such, applying the risk matrix above, if the Risk Mitigation Plan is implemented, I consider the overall assessment of reprisal risk will be [low / medium / high].

[name]

Authorised Officer

Sydney Harbour Federation Trust

[date]