



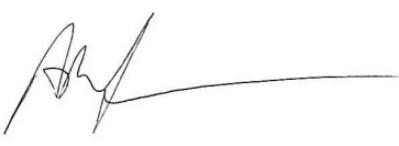
Australian Government
Australian Institute of Criminology

Procedures for dealing with Whistleblower Reports

July 2013

Procedures for dealing with whistleblower reports

I, DR ADAM TOMISON, Director, Australian Institute of Criminology, establish these procedures under subsection 16(2) of the *Public Service Act 1999*.

Signature: 

Dated: 1 July 2013

Director (Chief Executive) or Delegate read and approved:	Dr Adam Tomison
Policy reviewed by Staff Consultative Committee	
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Signed off as approved:	
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1. Application of these procedures

- 1.1 These procedures come into effect on 1 July 2013 and are established for:
 - (a) employees to make a whistleblower report to the Director or a person authorised by the Director to receive whistleblower reports; and
 - (b) the Director to deal with whistleblower reports.
- 1.2 Whistleblowing, in the APS context, is the reporting by an APS employee of an alleged breach of the Code of Conduct to a person authorised to receive such a report.
- 1.3 The person authorised to receive a whistleblower report is the Director and other persons authorised by the Director. These persons are the Deputy Director Research and Deputy Director Corporate.

2. Making a whistleblower report

- 2.1 A whistleblower report may be submitted to the Director, Deputy Director Research or Deputy Director Corporate.
- 2.2 Having a range of employees who have been authorised to receive reports improves the chances that a report can be made to a person within the AIC who is not implicated in the alleged activity or conduct, and with whom the whistleblower feels comfortable to make a report.
- 2.3 The report should be in writing, either in hard copy form or via electronic communication. The report should be marked confidential, and, if in hard copy form, in a sealed envelope, marked confidential and addressed to the Director, Deputy Director Research or Deputy Director Corporate.
- 2.4 The Director or other authorised person receiving the report, must acknowledge receipt of the report.
- 2.5 The report should:
 - (a) identify the employee who is the subject of the report;
 - (b) provide specific details of the alleged breach of the Code of Conduct to the extent known by the employee making the report. These details might include specific actions or behaviour, other persons involved, date(s), time(s) and location(s), as applicable; and
 - (c) have attached any documentary information available and considered relevant by the person making the report.
- 2.6 Whistleblower reports may also be made to:
 - (a) the Australian Public Service Commissioner, or a person authorised by the Australian Public Service Commissioner, or
 - (b) the Merit Protection Commissioner, or a person authorised by the Merit Protection Commissioner.
- 2.7 However, the Australian Public Service Commissioner or the Merit Protection Commissioner (or a person authorised by them) is only required to accept a whistleblower report where:
 - (a) they consider that it would be inappropriate for the employee to report to the Agency Head (such as a report concerning the Agency Head); or
 - (b) where the employee has previously made the whistleblower report to the Agency Head (or a person authorised by the Agency Head) and is not satisfied with outcome (see below).
- 2.8 Employees of the AIC may make whistleblower reports to the agency head of another APS agency, or a person authorised by that agency head. This may be appropriate, for example, where the report relates to the conduct of an APS employee from another APS agency.
- 2.9 Employees of other APS agencies may make whistleblower reports to the Director (or a person authorised by the Director) about the conduct of employees in the AIC. Those whistleblower reports will be dealt with in accordance with this Procedure.

3. Initial contact and advice

- 3.1 Before lodging a formal report about an alleged breach of the Code of Conduct, an employee may wish to speak informally with someone about whether the whistleblower provisions are appropriate, or some other complaint or dispute mechanisms would be appropriate. It is recommended that they seek advice from the Manager, HR and Administration about the process and possible alternative avenues for consideration.

- 3.2 The whistleblower scheme is not intended or well suited to address matters of personal grievances or to provide personal redress to employees. Promotion review committees, agency review of actions procedures or dispute procedures under a collective agreement may be more appropriate in some cases. In some circumstances, a matter may be best handled if the employee raises the matter with a manager in their team or section, as this may enable prompt action to be taken to remedy the situation.
- 3.3 Advice on the application and interpretation of the Code of Conduct is also available from the Ethics Advisory Service of the Australian Public Service Commission www.apsc.gov.au/ethics

4. Dealing with a whistleblower report

- 4.1 The Director, or other person authorised by the Director as set out in paragraph 1.3 above, must:
- accept the whistleblower report; and
 - give information to the whistleblower about the protections available under subsection 16(1) of the Public Service Act 1999 (the Act).
- 4.2 The Director must commence an inquiry into the whistleblower report unless the Director reasonably believes that there are circumstances in which to decline to conduct an inquiry.
- 4.3 Circumstances in which the Director may decline to conduct an inquiry, or discontinue such an inquiry, are as follows:
- the whistleblower report would be dealt with more appropriately by different means (*Example: When other action is being undertaken under the Act or another Commonwealth law*); or
 - the whistleblower report is vexatious, frivolous, misconceived or lacking in substance; or
 - insufficient detail has been provided; or
 - undertaking the inquiry would not otherwise be justified in all the circumstances.
- 4.4 The Director must report the outcome of the inquiry into the report to the whistleblower.
- 4.5 The Director must ensure that the outcome of the inquiry is dealt with as soon as practicable.
- 4.6 The Director must consider, having regard to all the circumstances, whether to give the person about whom the whistleblower report has been made an opportunity to be heard in relation to the report.
- 4.7 The Director will advise the whistleblower if the Director decides to:
- decline to conduct an inquiry into the whistleblower report, or
 - commences an inquiry into the whistleblower report, and then decides that there are circumstances in which the inquiry should be discontinued.

5. Investigation

- 5.1 Unless the Director (or a person authorised by the Director) declines to investigate the report, the Director or authorised person will investigate the report or authorise another person to investigate the report. The investigation is directed at determining whether there is sufficient evidence to conclude that the alleged conduct may constitute a breach of the Code of Conduct.
- 5.2 The Director, or the person authorised by the Director, will ensure that:
- the scope of the investigation is explained to the person making the report;
 - the matter is dealt with in a prompt and timely manner;
 - they consider, having regard to all the circumstances, whether to give the person about whom the whistleblower report has been made, an opportunity to be heard in relation to the report; and
 - due regard is paid to procedural fairness.
- 5.3 As soon as practicable after the findings of the investigation are made, the Director will advise the person making the report the outcome of the investigation.
- 5.4 If the Director believes that the reported conduct may constitute a breach of the Code of Conduct, it will be dealt with under the AIC's procedures for dealing with reports of breaches.
- 5.5 If the Director believes that the reported conduct should be dealt with under the review of actions provisions, it will be dealt with under the AIC's policy on Review of Actions.
- 5.6 If the Director believes that the matter should be referred to another agency or authority, it will be referred as appropriate.

- 5.7 If a report is determined to be frivolous or vexatious, the Director will advise the employee who made the report that no further action will be taken under these procedures.

6. Protection for whistleblowers

- 6.1 Section 16 of the Act explicitly prohibits victimisation of, or discrimination against, an employee who has made a whistleblower report about breaches or alleged breaches of the Code of Conduct to the Director, Australian Public Service Commissioner, Merit Protection Commissioner or an authorised person.
- 6.2 A person performing functions in or for the AIC must not victimise, or discriminate against, an APS employee because the employee has reported breaches or alleged breaches of the Code of Conduct consistent with section 16.
- 6.3 The Code of Conduct provides that APS employees, when acting in connection with their APS employment, must treat everyone with respect and courtesy, and without harassment. Taking retribution against a whistleblower is likely to contravene this obligation.
- 6.4 Details of whistleblower reports will be kept confidential as far as possible. Information, including the whistleblower's identity, will be released only to those who have a need to know and in order to meet the requirements of procedural fairness. However, whistleblowers should note that in the case of an allegation of criminal activity, the Director will refer the matter to the Australian Federal Police (AFP). If a report is referred to the AFP, the substance of the report and the identity of the whistleblower may become public.

7. Limits to the protection for whistleblowers

- 7.1 Whistleblower protection does not apply where an employee makes an unauthorised disclosure of information. For example, a disclosure to unauthorised persons outside the APS (such as a journalist, or a Senator or Member of Parliament) would not be protected.
- 7.2 APS Employees should also be aware that section 16 does not protect a whistleblower from liability for defamation in respect of disclosures made under the whistleblower provisions. At common law, the defence of qualified privilege may be available to a whistleblower who is sued for defamation by a person about whom a disclosure is made. However, the defence of qualified privilege may only be available if the statement alleged to be defamatory was made:
- in good faith and without malice, and
 - to a person authorised to receive the statement.

8. If dissatisfied with the outcome of the investigation

- 8.1 If an employee making a report is not satisfied with the outcome of the investigation, or the Director or authorised person declines to investigate (or discontinues an investigation into) the report, the employee can refer the report to:
- (a) the Australian Public Service Commissioner, or a person authorised by the Australian Public Service Commissioner, or
 - (b) the Merit Protection Commissioner, or a person authorised by the Merit Protection Commissioner.

9. Privacy and other issues

- 9.1 The identity of the whistleblower is regarded as "personal information" for the purposes of the *Privacy Act 1988*. All personal information will be protected in accordance with the provisions of that Act and the requirements of the *Information Privacy Principles*.
- 9.2 Applications for access to any material received as part of any investigation will be handled under the *Freedom of Information Act 1982*.

10. Further Information

- 10.1 All enquiries regarding this policy should be directed to Manager, HR and Administration.
- 10.2 Advice on the application and interpretation of the Code of Conduct is available from the Ethics Advisory Service of the Australian Public Service Commission (www.apsc.gov.au/ethics).