

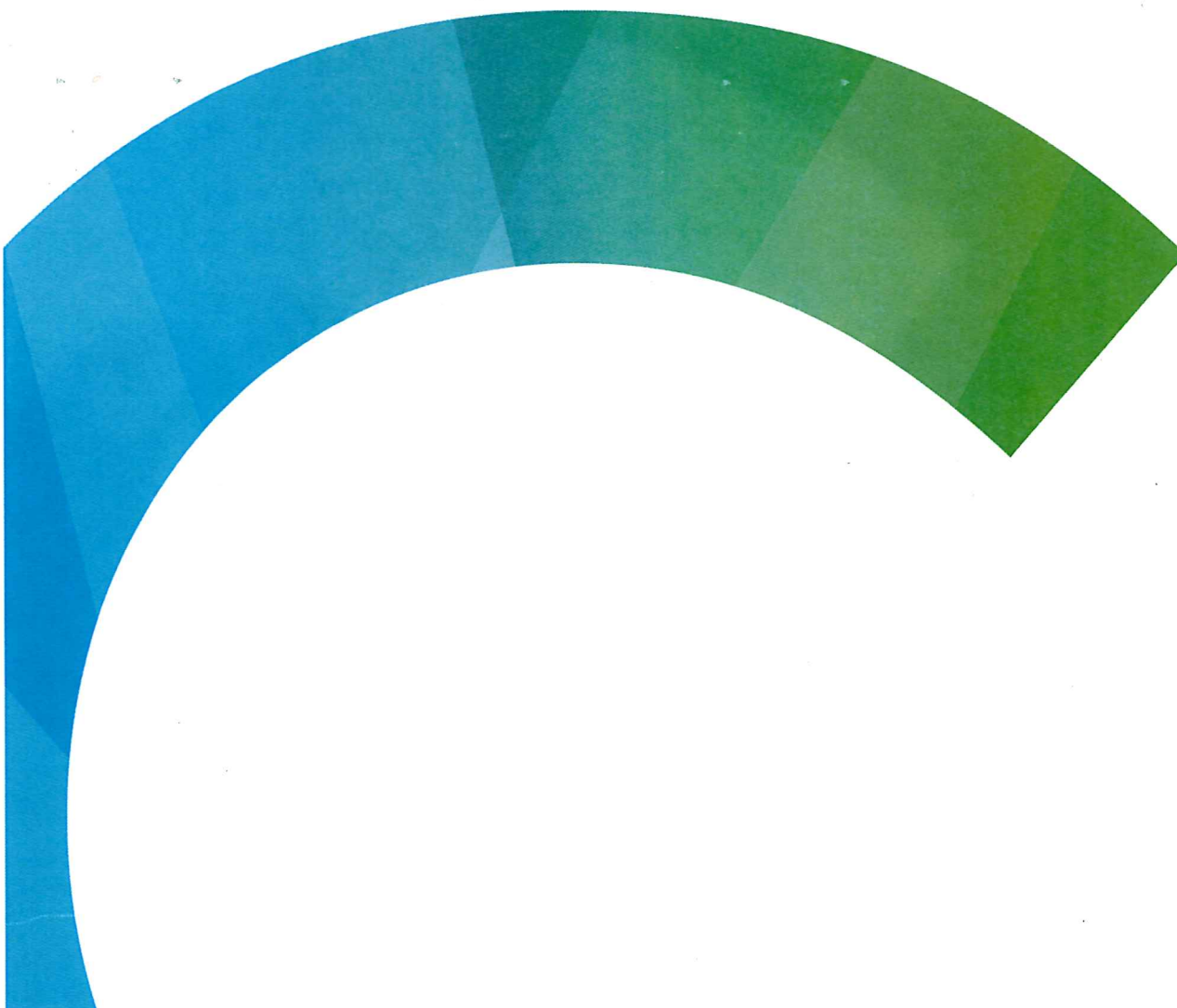


Australian Government
Climate Change Authority

PROCEDURES FOR DEALING WITH PUBLIC INFORMATION DISCLOSURES

Human Resources Policy

MAY 2014



These procedures are for the purpose of dealing with public interest disclosures made under the *Public Interest Disclosure Act 2013* ('the PID Act'). The PID Act creates a public interest disclosure scheme that promotes internal reporting of suspected wrongdoing in public sector agencies. These procedures will assist Climate Change Authority ('Authority') employees and other people to understand their obligations under the PID Act.

I, Anthea Harris, Chief Executive Officer of the Authority establish these procedures under section 59 of the PID Act.

These procedures commence on 15 January 2014. Please note that these procedures will supersede the previous *Procedures for Dealing with Whistleblower Reports*.



Anthea Harris

Chief Executive Officer

1. Introduction

- 1.1. The Authority actively encourages and supports the reporting of wrongdoing by public officials in accordance with the PID Act.
- 1.2. The Authority will take active steps to support and to protect persons who make disclosures in accordance with the PID Act.
- 1.3. The Authority recognises that it is important to have an effective system for reporting and investigating disclosable conduct for public and employee confidence in the operations of the Authority.

2. Disclosable Conduct

What is disclosable conduct?

- 2.1. The full definition of disclosable conduct is set out in section 29 of the PID Act. That definition applies for the purposes of these procedures.
- 2.2. In summary terms, disclosable conduct is conduct by an Agency or by a public official that:
 - a) contravenes a law of the Commonwealth, a State or a Territory;
 - b) occurs in a foreign country and contravenes a law in force in that country that applies to the agency or public official and that corresponds to a law in force in Victoria;
 - c) perverts, or attempts to pervert, the course of justice or involves corruption of any other kind;
 - d) constitutes maladministration, including conduct that:
 - i. is based on improper motives;
 - ii. is unreasonable, unjust or oppressive, or
 - iii. is negligent;
 - e) is an abuse of public trust;
 - f) is fabrication, falsification, or deception in relation to scientific research, or misconduct in relation to scientific work;
 - g) results in the wastage of public money or public property or of the money or property of an authority covered by the PID Act;
 - h) 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;
 - i) results in a danger to the environment or results in or increases the risk of a danger to the environment;
 - j) is prescribed by the PID Rules; or
 - k) is engaged in by a public official that:
 - i. involves abuse of the public official's position, or
 - ii. could, if proved, give reasonable grounds for disciplinary action against the public official.

- 3.6. Where a public official is considering making a disclosure, they should, in the first instance, contact the Authority's Authorised Officer to get information about making a public interest disclosure under the PID Act.
- 3.7. Authority employees may make a disclosure of disclosable conduct to their manager, an Authorised Officer, or in certain circumstances, to the Ombudsman.
- 3.8. Employees or former employees or officers of contracted service providers may make a disclosure of disclosable conduct to an Authorised Officer or, in certain circumstances, to the Ombudsman. In limited circumstances, a public official may be able to make another type of disclosure, including an external, emergency or legal disclosure. For more information see section 26 of the PID Act.
- 3.9. The contact details of the Authority's Authorised Officer are set out on the Authority's external website at www.climatechangeauthority.gov.au.
- 3.10. Where possible, Authority employees are encouraged to make their public interest disclosures to an Authorised Officer rather than their supervisor or manager. This is because Authorised Officers in the Authority have been trained in receiving public interest disclosures and thus can provide detailed information about how to make a public interest disclosure and about the protections given to disclosers under the PID Act.
- 3.11. The information contained in a 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.
- 3.12. A potential discloser should not investigate a matter themselves before making a disclosure.
- 3.13. A person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.
- 3.14. A person who is considering making a disclosure should be aware that making a disclosure does not entitle them to protection from the consequences of their own wrongdoing.
- 3.15. Once a public interest disclosure has been made, it cannot be withdrawn. But 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 CEO and delegate.
- 3.16. 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.

- g) advise the person of any orders or directions that may affect disclosure of the information.

Decision whether or not to allocate a disclosure

- 5.2. Where a public official, or a person who has been a public official, makes a disclosure of disclosable conduct directly to an Authorised Officer, the Authorised Officer must make a written record of the fact of the disclosure and, if the disclosure is not in writing, they should make a written record of the substance of the disclosure and of the time and date of the disclosure. Where possible, the record should be verified by the discloser.
- 5.3. Where a disclosure has been given to or made to an Authorised Officer, the Authorised Officer must use their best endeavours to decide on the allocation of the disclosure within 14 days after the disclosure is given to or made to the Authorised Officer.
- 5.4. An Authorised Officer who receives a disclosure must decide whether they are satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered to be an internal disclosure.

Note: The bases on which an Authorised Officer could be satisfied of this include: 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 disclosure is not about 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; and that the disclosure is not otherwise a public interest disclosure within the meaning of the PID Act.

- 5.5. Where an Authorised Officer receives a disclosure, the Authorised Officer may obtain information and may make such inquiries as they think fit, for the purposes of deciding the allocation of the disclosure, including for the purposes of deciding whether the disclosure is an internal disclosure or not.
- 5.6. When an Authorised Officer decides that a disclosure that has been made to them is not to be allocated they must, where the discloser's contact details are known to the Authorised Officer, advise the discloser in writing that the disclosure is not to be allocated, by sending to them a completed Form 1 (**Attachment A**).

The Authorised Officer allocates an internal disclosure

- 5.7. Where the Authorised Officer is aware of the contact details of the discloser, they should, as soon as practicable after receiving the disclosure and before allocating the disclosure, ask the discloser whether the discloser:
- a) consents to the Authorised Officer giving the discloser's name and contact details to the CEO and to the CEO's delegates, and
 - b) wishes the disclosure to be investigated.
- 5.8. The Authorised Officer should make a written record of the discloser's responses (if any) to the questions referred to in clause 5.7.

person who has disclosed information to them is a public official in relation to the making of the disclosure. However, if the Authorised Officer cannot contact the discloser, no determination can be made because the Authorised Officer must be able to give written notice of the determination to the individual (section 70(1) of the PID Act).

- 6.4. It is anticipated that an Authorised Officer should make this decision having regard to whether it is in the public interest, in the Authority's interest, and in the discloser's interest to have the disclosure dealt with as a disclosure under the PID Act.
- 6.5. Where the discloser requests the Authorised Officer to make this determination, the Authorised Officer must make a decision on this request and must inform the discloser accordingly, and if the Authorised Officer's decision is to decline the request to make a determination under section 70, they must also give the discloser reasons for their decision.
- 6.6. The written notice must be given to the individual. A copy of the determination notice should also be given to the CEO or their nominated delegate at the same time as Form 2.

7. Deciding whether or not to investigate

- 7.1. Where an Authorised Officer allocates an internal disclosure to the CEO or nominated delegate and the CEO or delegate has been given the contact details of the discloser, the CEO or delegate must within 14 days after the disclosure was allocated to the Authority, inform the discloser in writing using Form 3A (**Attachment C**) that the CEO or delegate may decide:
 - a) not to investigate the disclosure; or
 - b) not to investigate the disclosure further,and the CEO or delegate must inform the discloser of the grounds on which that decision will be taken.
- 7.2. The CEO or delegate must, as soon as practicable after receiving an allocation of a disclosure from an Authorised Officer (whether from within or without the Authority), consider whether to exercise the discretion under section 48 of the PID Act not to investigate the disclosure under the PID Act.
- 7.3. In broad terms, the CEO or delegate may decide not to investigate (or may decide to discontinue an investigation already begun) if:
 - a) the discloser is not a current or former public official (and a determination has not been made under section 70 of the PID Act);
 - b) the information does not to any extent concern serious disclosable conduct;
 - c) the disclosure is frivolous or vexatious;
 - d) the disclosure is substantially the same as a disclosure that has been investigated under the PID Act;

- 7.8. If the CEO or delegate decides to investigate the disclosure and commences an investigation but then decides not to investigate the disclosure further under section 48, the CEO or delegate must inform:
- a) the discloser of that decision, or the reasons for the decision and of other courses of action that might be available to the discloser under other laws of the Commonwealth by completing Form 4A (**Attachment E**) and sending it to the discloser; and
 - b) the Ombudsman of that decision and the reasons by completing Form 6 and sending it to the Ombudsman's office.

8. Procedures for investigators

- 8.1. Where the CEO or delegate has decided under clause 7.7 to commence an investigation into an internal disclosure, they may conduct the investigation as they think fit.
- 8.2. The CEO 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.
- 8.3. The CEO or delegate may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as they think fit.
- 8.4. When conducting an investigation, the CEO or delegate must ensure that a decision as to whether evidence is sufficient to prove a fact is made on the 'balance of probabilities'.
- 8.5. Despite clauses 8.1 and 8.3, the CEO or delegate, in conducting an investigation under these procedures, must comply with:
- a) the Ombudsman's Standard; and
 - b) to the extent they are relevant to the investigation:
 - the Commonwealth Fraud Control Guidelines;
 - these procedures; and
 - the Authority's *Procedures for Determining Breaches of the APS Code of Conduct*.

Interviewing witnesses

- 8.6. Subject to any restrictions imposed by a law of the Commonwealth other than the PID Act, the investigator must ensure that, if a person is interviewed as part of the investigation of an internal disclosure, that person is informed of:
- a) the identity and function of each person conducting the interview;
 - b) the process of conducting an investigation;
 - c) the authority of the investigator under the PID Act to conduct an investigation;
 - d) the protections provided to the person by section 57 of the PID Act; and
 - e) the person's duty:
 - i. 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 (subject to the public official's privilege against incriminating themselves or exposing themselves to a penalty);
 - ii. not to take or threaten to take reprisal action against the discloser; and

- 8.16. The Ombudsman has indicated that an application for extension should be made as soon as it becomes apparent that the investigation will not be completed within 90 days, and should include reasons why the investigation cannot be completed within the time limit, the views of the discloser and an outline of actions taken to progress the investigation.
- 8.17. An investigation that is not completed within time does not become invalid.

9. Reports of Investigations

- 9.1. In preparing a report of an investigation, an investigator should comply with the PID Act, the Ombudsman's Standard and these procedures.
- 9.2. A report of an investigation under the PID Act must set out:
- a) the matters considered in the course of the investigation;
 - b) the duration of the investigation;
 - c) the findings (if any);
 - d) the action (if any) that has been, is being, or is recommended to be taken;
 - e) any claims about, and any evidence of detrimental action taken against the discloser, and the Authority's response to those claims and that evidence;
- and, where relevant, a report must:
- f) identify whether there have been one or more instances of disclosable conduct;
 - g) identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates;
 - h) explain the steps taken to gather evidence;
 - i) summarise the evidence; and
 - j) set out any recommendations based on that evidence.
- 9.3. The investigator must, within a reasonable time of preparing a report of an investigation under the PID Act, provide a copy of the report to the discloser.
- 9.4. Despite clause 9.3, the investigator may delete from the copy of the report provided to the discloser any material:
- a) that is likely to enable the identification of the discloser to another person, or
 - b) the inclusion of which would result in the copy being a document:
 - i. that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982*
 - ii. having, or requiring to have, a national security or other protective security classification, or
 - iii. containing intelligence information.
- 9.5. Despite clause 9.3, the investigator must delete from the copy of a report given to the discloser any material which would result in the report contravening a designated publication restriction.

10. Confidentiality

- 10.1. 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

person because of a public interest disclosure (including a proposed or a suspected public interest disclosure). A person taking reprisal may also be prosecuted under the PID Act with criminal penalties of two years imprisonment or 120 penalty units.

- 13.4. It is an offence to disclose the identity of an individual who makes a public interest disclosure.

14. Assessing the risk of reprisal

- 14.1. A risk assessment should be completed after a public interest disclosure is received.
- 14.2. Consultation should occur with the discloser and, subject to confidentiality concerns, their supervisor or manager to ascertain whether threats of reprisal may occur.
- 14.3. The Ombudsman's 'Agency guide to the Public Interest Disclosure Act 2013', www.ombudsman.gov.au/docs/, provides information on how to carry out a risk assessment.
- 14.4. The first step is to identify risk factors, including, but not limited to:
- a) past threats;
 - b) the significance of the reported wrongdoing;
 - c) the level of confidentiality with which the disclosure has been treated; and
 - d) the level of vulnerability of the discloser.
- 14.5. These factors will then need to be assessed, considering the likelihood of them occurring and the potential consequences if they do occur.
- 14.6. The Authority must attempt to control the risks of reprisal action proactively and continuously to ensure they are minimised.

15. Further information

- 15.1. The full version of the PID Act is available at, <http://www.comlaw.gov.au/Details/C2013A00133>
- 15.2. For more information relating to the PID Act, see the information on the PID Act on the [Ombudsman's website](#).
- 15.3. Other legislation and guides referenced in these procedures include:
- a) [The Public Service Act 1999](#)
 - b) [The Work Health and Safety Act 2011](#)
 - c) [The Commonwealth Fraud Control Guidelines](#)
 - d) [The Freedom of Information Act 1982](#)
 - e) [The Ombudsman's 'Agency Guide to the Public Interest Disclosure Act'](#)



Form 1 Notice to discloser – Decision not to allocate (s 44(2))

To: [insert name of discloser]

[contact details: email address, postal address]

On, [insert date], I [insert name], an authorised officer of the Climate Change Authority, received a disclosure from you.

In accordance with s 43(2) of the Public Interest Disclosure Act I decided not to allocate this disclosure.

REASONS

I was satisfied that there were no reasonable grounds on which the disclosure could be considered to be an internal disclosure because:

[insert one or more of the following grounds relied on:]

you, the discloser, are not a public official and have not been a public official
the information does not tend to show one or more instances of disclosable conduct
the conduct was not engaged in by:

an agency

a public official in connection with his or her position as a public official

a contracted service provider for a Commonwealth contract in connection with entering into, or giving effect to, that contract

the disclosure was not made to:

- (i) an authorised internal recipient or*
- (ii) your supervisor.*

OTHER COURSES OF ACTION THAT MAY BE AVAILABLE TO YOU

Other course of action that may be available to you under other laws of the Commonwealth are [include only those that are relevant to the kind of disclosable conduct in question, for example]:

- (a) a complaint to the Ombudsman under the Ombudsman Act;*
- (b) an application for an order to stop bullying under the Fair Work Act;*
- (c) making an adverse action claim under the Fair Work Act.*

Signed:

Date:

Authorised officer



Public Interest Disclosure Act 2013

Form 2 Notice of allocation of disclosure (s 44(1))

To: Principal officer of the Climate Change Authority

Principal officer of [agency y] [delete if necessary]

Cc: Ombudsman

I, [insert name], an authorised officer of the Climate Change Authority, having received a disclosure under the PID Act, have decided to allocate the disclosure to [insert agency or agencies] (our reference PID2014/****).

[If a different agency] I received consent to this allocation from [insert name], authorised officer of [agency y] on [insert date].

INFORMATION DISCLOSED

The information that was disclosed to me was [insert details – emails, letter, documents, pictures].

SUSPECTED DISCLOSABLE CONDUCT

The information that was disclosed to me tends to show the following suspected disclosable conduct:

[insert nature of disclosable conduct – refer s 29 – here is an example:]

- *corruption by a public official in the agency being provision of sensitive information about a prospective tender for money;*
- *conduct that could give reasonable grounds for disciplinary action against a public official in this agency, being*
 - *alleged bullying and harassment by a public official in this agency against another public official in the agency*
- *alleged misuse of Commonwealth resources*



Australian Government
Climate Change Authority

Public Interest Disclosure Act 2013

Form 3 Notice to discloser of allocation (s 44(2))

To: **[insert name of discloser]**

[contact details: email address, postal address]

I, **[insert name]**, an authorised officer of the Climate Change Authority, having received a disclosure from you under the Public Interest Disclosure Act, have decided to allocate the disclosure to **[insert agency or agencies]**.

Signed:

Date:

Authorised officer



Public Interest Disclosure Act 2013

Form 3A Notice to Discloser – Investigation powers (s 9, Public Interest Disclosure Standard 2013)

To: **[insert name of discloser]**
[contact details: email address, postal address]

I, **[insert name]**, as the delegate of the principal officer of the Climate Change Authority will be considering your disclosure and advise you that my powers as delegate include:

- (a) to decide under s 48 of the Public Interest Disclosure Act (PID Act) not to investigate the disclosure on a ground or grounds set out in that section (refer to page 2)
- (b) to decide under s 48 of the PID Act not to investigate the disclosure further on a ground or grounds set out in that section (refer to page 2), if I decide to start to investigate the disclosure.

Signed:

Date:

Delegate of the principal officer



Public Interest Disclosure Act 2013

Form 4 **Notice to discloser – Decision not to investigate
(s 50(2))**

To: **[insert name of discloser]**
[contact details: email address, postal address]

On **[insert date]**, I, **[insert name]**, a delegate of the principal officer of the Climate Change Authority, decided under s 48 of the Public Interest Disclosure Act not to investigate the disclosure made by you and allocated to this agency on **[insert date of allocation]**.

REASONS FOR DECISION

I decided not to investigate the disclosure on the ground that:

(a) **[insert ground or grounds relied on from s 48(1)]**

[for example:

- *the disclosure is frivolous or vexatious;*
- *the information in your disclosure does not, to any extent, concern serious disclosable conduct]*

because **[insert findings of fact for this conclusion and the reasoning process that led to this conclusion]**.

OTHER COURSES OF ACTION THAT MAY BE AVAILABLE TO YOU

Other courses of action that may be available to you under other laws of the Commonwealth are **[include only those that are relevant to the kind of disclosable conduct in question, for example]**:

- (a) *a complaint to the Ombudsman under the Ombudsman Act*
- (b) *an application for an order to stop bullying under the Fair Work Act*
- (c) *seeking judicial review, under the Administrative Decisions (Judicial Review) Act 1977, of my decision not to investigate the disclosure*
- (d) *making an adverse action claim under the Fair Work Act.*

Signed:

Date:

Delegate of the principal officer



Public Interest Disclosure Act 2013

Form 4A **Notice to discloser – Decision to cease investigation
(s 50(2))**

To: **[insert name of discloser]**
[contact details: email address, postal address]

On **[insert date]**, I, **[insert name]**, a delegate of the principal officer of the Climate Change Authority, having started to investigate the disclosure allocated to this agency on **[insert date of allocation]** (our reference: **[PID2014/*****]**), decided not to investigate the disclosure further.

REASONS FOR DECISION

I decided not to investigate the disclosure further on the ground that:

[insert ground or grounds relied on from s 48(1)]

[for example:

- the disclosure is frivolous or vexatious;*
- the information you disclosed does not, to any extent, concern serious disclosable conduct]*

because **[insert findings of fact for this conclusion and reasoning process that led to this conclusion]**.

OTHER COURSES OF ACTION THAT MAY BE AVAILABLE TO YOU

Other courses of action that may be available to you under other laws of the Commonwealth are **[include only those that are relevant to the kind of disclosable conduct in question, for example]**:

- (a) a complaint to the Ombudsman under the Ombudsman Act*
- (b) an application for an order to stop bullying under the Fair Work Act*
- (c) seeking judicial review, under the Administrative Decisions (Judicial Review) Act 1977, of my decision not to investigate the disclosure further*
- (d) making an adverse action claim under the Fair Work Act.*

Signed:

Date:

Delegate of the principal officer



Public Interest Disclosure Act 2013

**Form 5 Notice to discloser – Investigation of your disclosure
(s 50(1))**

To: [insert name of discloser]
[contact details: email address, postal address]

On [insert date], I, [insert name], a delegate of the principal officer of the Climate Change Authority, decided under s 47 of the Public Interest Disclosure Act that I am required to investigate the disclosure made by you and allocated to this agency on [insert date of allocation].

ESTIMATED LENGTH OF THE INVESTIGATION

I estimate that the investigation will be completed in [insert number] days from the date your disclosure was allocated to this agency.

Signed:

Date:

Delegate of the principal officer



Public Interest Disclosure Act 2013

Form 6 **Notice to Ombudsman – Decision not to investigate
(s 50A)**

To: Ombudsman

On [insert date], I, [insert name], a delegate of the principal officer of the Climate Change Authority, decided under s 48 of the Public Interest Disclosure Act not to investigate the disclosure allocated to this agency on [insert date of allocation] (our reference: [2014/*****]).

REASONS FOR DECISION

I decided not to investigate the disclosure on the ground that:

[insert ground or grounds relied on from s 48(1)]

[for example:

- the disclosure is frivolous or vexatious;*
- the information does not, to any extent, concern serious disclosable conduct]*

because [insert findings of fact for this conclusion and reasoning process that led to this conclusion].

Signed:

Date:

Delegate of the principal officer



Public Interest Disclosure Act 2013

Form 6A Notice to Ombudsman – Decision to cease investigation (s 50A)

To: Ombudsman

On [insert date], I, [insert name], a delegate of the principal officer of the Climate Change Authority, having started to investigate the disclosure allocated to this agency on [insert date of allocation] (our reference: [PID2014/*****]), decided under s 48 of the Public Interest Disclosure Act not to investigate the disclosure further.

REASONS FOR DECISION

I decided not to investigate the disclosure further on the ground that:

[insert ground or grounds relied on from s 48(1)]

[for example:

- the disclosure is frivolous or vexatious;
- the information does not, to any extent, concern serious disclosable conduct]

because [insert findings of fact for this conclusion and reasoning process that led to this conclusion].

Signed:

Date:

Delegate of the principal officer



Public Interest Disclosure Act 2013

Form 7 Notice to discloser of completion of investigation

To: [insert name of discloser]

[contact details: email address, postal address]

I, [insert name], the delegate of the principal officer who investigated your disclosure, now advise you that the report of the investigation was completed on [insert date of completion of report].

The investigation [was therefore/was not] completed within the time limit under the Public Interest Disclosure Act for the investigation.

You will be provided with a copy of the report of the investigation shortly, but you should be aware that the copy provided to you may have material deleted from it, in accordance with the Public Interest Disclosure Act.

Signed:

Date:

Delegate of the principal officer