

Our ref: 2021-104592
PID ref: PID-2020-400006

15 December 2022

Australian Public Service Commission
by email: PID@apsc.gov.au

Dear Australian Public Service Commission

Finalisation of investigation of a complaint about the APSC's handling of a disclosure

Thank you for the Australian Public Service Commission's (APSC) assistance with our investigation of a complaint about its handling of a disclosure under the *Public Interest Disclosure Act 2013* (PID Act) concerning recruitment practices of the Federal Court of Australia (Federal Court).

Our investigation is now finalised, and we consider it appropriate to provide comments and suggestions to the APSC under s 12(4) of the *Ombudsman Act 1976*.

Background

s.47E [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The PID was investigated by s47E and s47F [REDACTED]. In this letter we refer to s47E [REDACTED] as the Investigator.

Our investigation focused on whether:

- there were deficiencies in the PID investigation process, including the investigation report
- the report findings were, in the circumstances, open to the investigator to make
- further steps are required to address any deficiencies in the PID investigation and report and/or improve the APSC's handling of PIDs in future.

Investigation findings

Broadly, it is our view that:

- s47E and s47F [REDACTED]
[REDACTED]
- s47E [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- the APSC should take steps to improve its handling of similar matters in future s47E and [redacted]

Comments

s47E and s47F [redacted]. Each of these topics is discussed below.

1. Record keeping

s47E and s47F [redacted]. s47E and s47F [redacted]

s47E and s47F [redacted] s47E and [redacted]

s47E and s47F [redacted]

Additionally, as our Agency Guide to the PID Act (the Agency Guide) notes, “the formality of the investigation should be commensurate with the seriousness and nature of the alleged disclosable conduct and the importance of the evidence. The investigator’s records should contain sufficient detail appropriate to the nature of the investigation.” s47E and s47F [redacted]

[redacted]

s47E and s47F [redacted]

s47E and s47F [redacted]

[redacted]

We acknowledge the APSC’s advice that, since April 2022, all new PID matters are recorded in its new Matter Management System called LEX. As we understand it, this system should improve the APSC’s ability to track and maintain records of disclosures made to the agency and investigations it undertakes.

2. PID Investigation

What steps are required for a PID to be properly or adequately investigated, and thereby meet one of the principal objects of the PID Act, will largely depend on the nature of the PID. This is because, apart from a few specific requirements,¹ a PID investigation is conducted as the relevant officer sees fit.

Our Agency Guide, at 2.7.7.1, contains a list of reasons why an investigation may be considered inadequate. There is necessarily some subjectivity involved in assessing whether a PID investigation was adequate. In cases where there are fewer, or more minor deficiencies identified, we may not consider the deficiencies sufficient to conclude the investigation was not adequate.

s47E and s47F
[Redacted text block]

s47E and s47F
[Redacted text block]

- [Redacted list item]
- [Redacted list item]
- [Redacted list item]
- [Redacted list item]
- [Redacted list item]
- [Redacted list item]
- [Redacted list item]
- [Redacted list item]

s47E and s47F
[Redacted text block]

- [Redacted list item]
- [Redacted list item]

s47E and s47F
[Redacted text block]

¹ Specific requirements including: 1. procedural requirements when investigating a possible breach of the APS Code of Conduct or Parliamentary Service, 2. standard of proof is the balance of probabilities, 3. any evidence relied on is relevant (per the PID Standard).

s47E and s47F [Redacted]

1. s47E and s47F [Redacted]

s47E and s47F [Redacted] s.47E [Redacted]

s47E and s47F [Redacted]

2. s47E and s47F [Redacted]

s47E and s47F [Redacted] s.47E [Redacted]

s.47E [Redacted] s.47F, s 47E [Redacted]

s. 47E [Redacted] s.47E [Redacted]

s.47E [Redacted] s.47E [Redacted]

3. s47E and s47F [redacted]

s.47F, s 47E [redacted]

s.47F, 47E [redacted]
[redacted]
[redacted]
[redacted]
[redacted]

s.47E [redacted]
[redacted]
[redacted]
[redacted]

s.47E [redacted]
[redacted]

4. s47E [redacted]

s.47F, 47E [redacted]
[redacted]
[redacted]
[redacted]
[redacted]

s.47F, s 47E [redacted]
[redacted]
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[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

5. s47E and s47F [redacted]
[redacted]

s47E and 47F [redacted]
[redacted]
[redacted]

s.47F, s 47E [redacted]
[redacted]
[redacted]

s.47E [Redacted]

s.47E [Redacted]

- 6. s47E and s47F [Redacted]

s.47E [Redacted]

s.47E [Redacted]

s.47E, 47F [Redacted]

s.47E [Redacted]

- 7. s47E and s47F [Redacted]

s.47E [Redacted]

s.47E [Redacted]

s.47E [Redacted]

s.47E [Redacted]

3. PID Report

s.47E and s.47F [Redacted] a s 51 report should include an adequate summary of the content of the evidence on which any findings and recommendations are based. This assists a discloser to understand the rationale for an agency's conclusions and assists any third parties reading the report (including our Office when assessing a complaint about an agency's handling of a PID) to follow the agency's reasoning, assess the adequacy of the investigation undertaken and whether the conclusions are open to make and are supported by the available evidence.

s.47E and s.47F [Redacted]

s.47E and s.47F [Redacted]

Suggestions

s.47E and s.47F [Redacted] we suggest the APSC:

1. s.47E and s.47F [Redacted] 7E and s.47F s.47E [Redacted] s.47E and s.47F [Redacted] making some additions to the APSC's investigative procedures, s.47E [Redacted] s.47E [Redacted] and other guidance material for APSC Investigators s.47E and s.47F [Redacted]
2. Review its records management frameworks and systems s.47E [Redacted] s.47E [Redacted]

s47E [Redacted]

3. s47E [Redacted]

4. s.47E [Redacted]

s47E and s47F [Redacted]

While we have decided to finalise this investigation, you should be aware that we offer the complainant an opportunity to seek an internal review of this decision. Should this occur and we reach a different conclusion about this complaint, we may contact you again.

If you have any questions or require any further information, please contact me on s.47F [Redacted] or by email to: pid@ombudsman.gov.au.

Yours sincerely

s.47F [Redacted] (by electronic signature)
Director
Public Interest Disclosure Team
Office of the Commonwealth Ombudsman
Influencing systemic improvement in public administration