

CHIEF EXECUTIVE INSTRUCTIONS
CHAPTER 3.25

Public Interest Disclosures – FSANZ
Policy and Procedures

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These procedures are made by the principal officer of FSANZ (the Agency) under section 59 of the *Public Interest Disclosure Act 2013* (the PID Act).

CHAPTER 1 – INTRODUCTION

The Agency encourages the making of reports of disclosable conduct

1. The Agency encourages and supports the reporting of wrongdoing by public officials in accordance with the PID Act.
2. The Agency will take active steps to support and to protect persons who make disclosures under the PID Act.
3. The Agency recognises that it is important to have an effective system for reporting and investigating disclosable conduct. Some of the potential benefits of such a system are reducing the work health and safety risks to our workers, saving money and making our programs and processes more efficient. Another potential benefit is increasing the confidence of our workers in the way the Agency is managed.
4. The Agency also recognises that a decision by the Agency not to deal with a disclosure as a disclosure under the PID Act, when as a matter of law that is how the disclosure should have

been dealt with, could be seriously detrimental to the discloser and to the effective operation and the good reputation of the Agency.

What is disclosable conduct?

5. 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.
6. 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, or
 - 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 the Australian Capital Territory, or
 - c. perverts, or attempts to pervert, the course of justice or involves corruption of any other kind, or
 - d. constitutes maladministration, including conduct that:
 - is based on improper motives
 - is unreasonable, unjust or oppressive, or
 - is negligent, or
 - e. is an abuse of public trust, or
 - f. is fabrication, falsification, or deception in relation to scientific research, or misconduct in relation to scientific work, or
 - 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, or
 - 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, or
 - i. results in a danger to the environment or results in or increases the risk of a danger to the environment, or
 - j. is prescribed by the PID Rules, or
 - k. is engaged in by a public official that:
 - involves abuse of the public official's position, or
 - could, if proved, give reasonable grounds for disciplinary action against the public official.
7. It does not matter whether disclosable conduct occurred before or after 15 January 2014.
8. It does not matter whether the public official who carried out the alleged conduct has ceased to be a public official since the time the conduct is alleged to have occurred, but it is necessary that they carried out the conduct in connection with their position as a public official.

CHAPTER 2 – THE DISCLOSURE PROCESS

Making a disclosure under the PID Act

9. All employees in the Agency and former employees in the Agency are entitled to make a disclosure under the PID Act.

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10. All contracted service providers and their employees who provide, or who provided, services to the Agency under a contract with the Agency are entitled to make a disclosure under the PID Act.
11. All public officials and former public officials are entitled to make a disclosure under the PID Act.
12. A public interest disclosure may be made anonymously or openly.
13. A public interest disclosure may be made orally or in writing.
14. Where a public official makes a public interest disclosure, they do not have to state or intend that they are doing so under the PID Act.
15. Where a public official is considering making a disclosure, they should, in the first instance, contact one of the Agency's Authorised Officers to get information about making a public interest disclosure under the PID Act.
16. Employees in the Agency may make a disclosure of disclosable conduct to their supervisor or their manager, or to an Authorised Officer, or in certain circumstances, to the Ombudsman.
17. 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.
18. FSANZ's Authorised Officers are as follows.

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<p>Glen Neal, General Manager, Risk Management and Intelligence</p> <p>Telephone: (02) 6271 2222</p> <p>PID@foodstandards.gov.au</p> <p>Address: Level 3, 154 Featherston Street, Wellington NZ 6011</p>	<p>Christel Leemhuis, Acting General Manager, Science and Risk Assessment</p> <p>Telephone: (02) 6271 2222</p> <p>PID@foodstandards.gov.au</p> <p>Address: Level 4, 15 Lancaster Place, Majura Park, ACT 2609</p>

19. Where possible, an employee in the Agency should make their public interest disclosure to an Authorised Officer rather than their supervisor or manager.

Note: Authorised Officers in the Agency can provide information about how to make a public interest disclosure and about the protections given to disclosers under the PID Act.

Note: This clause does not prevent an employee in the Agency from making a disclosure to their supervisor or manager.
20. 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

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supporting evidence where that is available to the discloser and should, where possible, identify any witnesses to the disclosable conduct.

21. A potential discloser should not investigate a matter themselves before making a disclosure.
22. A person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.
23. 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.
24. 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 principal officer and delegate.
25. 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.
26. A supervisor or manager or Authorised Officer who receives a disclosure of disclosable conduct from a public official must deal with the disclosure in accordance with the PID Act and in accordance with the Ombudsman's Standard and these procedures.

CHAPTER 3 – PROCEDURES FOR SUPERVISORS AND MANAGERS

27. Where a public official in the Agency discloses information to their supervisor or manager and that supervisor or manager has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the supervisor or manager must, as soon as practicable, give the information to an Authorised Officer in the Agency.
28. Where such a disclosure is made to a supervisor or manager, that person must make a written record of the fact of the disclosure, and if the disclosure is not in writing, they must make a written record of the substance of the disclosure and of the time and date of the disclosure.
29. The person to whom the disclosure has been made must ask the discloser to sign the record of the disclosure, where this is practicable.
30. At the time a supervisor or manager gives information to an Authorised Officer under paragraph 27, they must also give the Authorised Officer their written assessment of any risks that reprisal action might be taken against the person who disclosed the information to the supervisor or manager.
31. Where a supervisor or manager has given information to an Authorised Officer under paragraph 27, and where the supervisor or manager is able to contact the discloser, they must inform the discloser that they have given the information to an Authorised Officer in the Agency and advise the discloser of the name and contact details of that Authorised Officer.

CHAPTER 4 – PROCEDURES FOR AUTHORISED OFFICERS

Authorised Officer must advise disclosers and potential disclosers about the PID Act

32. Where:

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- a. 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
- b. 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
- c. the Authorised Officer is aware of the contact details of the person

the Authorised Officer must:

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

Authorised Officer must decide whether or not to allocate a disclosure

33. 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 must make a written record of the substance of the disclosure and of the time and date of the disclosure.
34. The Authorised Officer must ask the discloser to sign the written record of the disclosure, where this is practicable.
35. 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.
36. 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.
37. 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.
38. Where 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**.
39. Where the Authorised Officer is aware of the contact details of the discloser, they must, as soon as practicable after receiving the disclosure and before allocating the disclosure, ask the discloser whether the discloser:

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- a. consents to the Authorised Officer giving the discloser's name and contact details to the principal officer and to the principal officer's delegates, and
 - b. wishes the disclosure to be investigated.
40. The Authorised Officer must make a written record of the discloser's responses (if any) to the questions referred to in paragraph 38.
41. Where a discloser does not respond within 7 days to the question referred to:
- a. in paragraph 39.a – the discloser is taken not to have consented to the disclosure of their name and contact details to the principal officer and their delegates, and
 - b. in paragraph 39.b – the discloser is taken to wish the disclosure to be investigated.

Where Authorised Officer allocates an internal disclosure

42. An Authorised Officer must obtain the consent of an Authorised Officer in another agency before the first Authorised Officer can allocate an internal disclosure to that agency.
43. Where an Authorised Officer in the Agency allocates a disclosure to an agency (including to the Agency) they must complete **Form 2** and send it to the principal officer or to the delegate nominated by the principal officer.
44. The Authorised Officer must copy the completed **Form 2** to the relevant contact officer in the Ombudsman's Office.
45. Where the Authorised Officer is aware of the contact details of the discloser, the Authorised Officer must inform the discloser of the allocation using completed **Form 3**.
46. Where an Authorised Officer in the Agency allocates a disclosure, they must conduct a risk assessment based on a checklist of risk factors, and having regard to any assessment of risk provided under these procedures by the discloser's supervisor or manager.
47. The Ombudsman's 'Agency Guide to the Public Interest Disclosure Act 2013', which can be found via <http://www.ombudsman.gov.au> provides information on how to carry out a risk assessment.

CHAPTER 5 – ANONYMOUS DISCLOSURES

48. All persons, including public officials, persons who have been public officials and others, are encouraged to make disclosures in an anonymous way if they wish to do so.

Where the discloser provides no name and no contact details or where the discloser provides no name but provides anonymous contact details

49. A disclosure is anonymous if the identity of the discloser is not revealed and if no contact details for the discloser are provided. It is also anonymous if the discloser does not disclose their name but does provide anonymous contact details.
50. Merely because a supervisor or manager or Authorised Officer has received a disclosure of one of these kinds that concerns disclosable conduct does not mean that it cannot be treated as a disclosure for the purposes of the PID Act.
51. Where a supervisor or manager receives a disclosure of one of these kinds they must refer it to an Authorised Officer as soon as is reasonably practicable.

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52. Where an Authorised Officer receives a disclosure of one of these kinds they must consider whether to exercise the power in section 70 of the PID Act to determine on their own initiative that a 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 (see s 70(1)).
53. It is anticipated that an Authorised Officer would make this decision having regard to whether it is in the public interest, in the Agency's interest and in the discloser's interest to have the disclosure dealt with as a disclosure under the PID Act.
54. 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.
55. Where an Authorised Officer decides to make a determination under section 70 that the Act has effect as if the individual had been a public official, the Authorised Officer should seek assistance from the Legal area on the drafting of the written notice.
56. The written notice must be given to the individual. A copy of the determination notice should also be given to the principal officer or their nominated delegate at the same time as **Form 2**.

CHAPTER 6 – DECIDING WHETHER OR NOT TO INVESTIGATE

57. Where an Authorised Officer allocates an internal disclosure to the principal officer or nominated delegate and the principal officer or delegate has been given the contact details of the discloser, the principal officer or delegate must, within 14 days after the disclosure was allocated to the Agency, inform the discloser in writing using **Form 3A** that the principal officer or delegate may decide:
 - a. not to investigate the disclosure, or
 - b. not to investigate the disclosure furtherand the principal officer or delegate must inform the discloser of the grounds on which that decision will be taken.
58. The principal officer or delegate must, as soon as practicable after receiving an allocation of a disclosure from an Authorised Officer (whether from within or without the Agency) consider whether to exercise the discretion under s 48 of the PID Act not to investigate the disclosure under the PID Act.
59. In broad terms, the principal officer 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), or
 - b. the information does not to any extent concern serious disclosable conduct, or
 - c. the disclosure is frivolous or vexatious, or
 - d. the disclosure is substantially the same as a disclosure that has been investigated under the PID Act, or

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- e. the disclosure is substantially the same as a disclosure that has already been investigated, or is currently being investigated, under another law of the Commonwealth, and
 - it would be inappropriate to conduct another investigation at the same time, or
 - the principal officer is reasonably satisfied that there are no matters that warrant further investigation, or
 - f. the discloser has informed the principal officer that they do not wish the disclosure to be pursued and the principal officer is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation, or
 - g. 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 investigator the information they requested, or
 - of the age of the information.
60. Guidance on factors that might go towards the exercise of the power in section 48 is provided in the Ombudsman's 'Agency Guide to the Public Interest Disclosure Act 2013', which can be found via <http://www.ombudsman.gov.au>.

Decision not to investigate

61. Where the principal officer or delegate decides under section 48 of the PID Act not to investigate a disclosure under Division 2 of Part 3 of the PID Act, the principal officer or delegate must, as soon as reasonably practicable, inform the Ombudsman of that decision, and of the reasons for that decision, by completing **Form 6** and sending it to the relevant contact in the Ombudsman's Office.
62. Where the principal officer or delegate decides under section 48 of the PID Act not to investigate a disclosure, and where they have been given the name and contact details of the discloser, the principal officer or delegate must, as soon as reasonably practicable, 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, by completing **Form 4** and sending it to the discloser.

Decision to investigate

63. Where the principal officer or delegate has considered exercising the discretion under section 48 of the PID Act and has decided that they are required to investigate the disclosure, and where the principal officer or delegate has been given the name and contact details of the discloser, the principal officer or delegate must inform the discloser that they are required to investigate the disclosure, and inform the discloser of the estimated length of the investigation by completing **Form 5** and sending it to the discloser.
64. If the principal officer or delegate decides to investigate the disclosure and starts to investigate the disclosure but then decides not to investigate the disclosure further under section 48, the principal officer 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** and sending it to the discloser; and

- b. the Ombudsman of that decision and the reasons by completing **Form 6A** and sending it to the relevant contact in the Ombudsman's office.

CHAPTER 7 – PROCEDURES FOR INVESTIGATORS

- 65. Where the principal officer or delegate has decided under paragraph 63 to commence an investigation into an internal disclosure, they may conduct the investigation as they think fit.
- 66. The principal officer 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.
- 67. The principal officer or delegate may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as they think fit.
- 68. When conducting an investigation the principal officer or delegate must ensure that a decision whether evidence is sufficient to prove a fact is made on the balance of probabilities.
- 69. Despite paragraphs 65 and 67, the principal officer 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, and
 - these procedures, and
 - the procedures established under s 15(3) of the *Public Service Act 1999*.

Interviewing witnesses

- 70. 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, and
 - b. the process of conducting an investigation, and
 - c. the authority of the investigator under the PID Act to conduct an investigation, and
 - d. the protections provided to the person by section 57 of the PID Act, and
 - e. the person's duty:
 - 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), and
 - not to take or threaten to take reprisal action against the discloser, and
 - subject to the PID Act, not to disclose the identity of the person who made the disclosure.
- 71. 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.
- 72. Where the investigator is aware of the discloser's identity and considers that it is necessary to reveal the discloser's identity to a witness, the investigator must consult with the discloser, where practicable, before proceeding.

Procedural fairness

73. 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.
74. Procedural fairness may require that the discloser's identity be revealed to the person who is the subject of the disclosure.
75. Where the investigator in preparing the report of their investigation proposes to:
 - a. make a finding of fact, or
 - b. express an opinion that is adverse to the discloser, to a public official who is the subject of the disclosure or to another person:

the investigator or delegate must give the person who is the subject of that proposed finding or opinion a copy of the evidence that is relevant to that proposed finding or opinion and must give the person a reasonable opportunity to comment on it.

Note: Paragraph 755 will not apply where the investigation does not make substantive findings or express adverse opinions but instead simply recommends or decides that further investigation action should or should not be taken or will or will not be taken.

76. 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.
77. The investigator must ensure that the evidence that is relied on in an investigation is relevant.
Note: In broad terms, evidence is relevant to an investigation if it is of consequence to the matter under investigation and makes the existence of a fact more probable or less probable than it would be without the evidence.

Time limits

78. The investigator has 90 days from the date the disclosure was allocated in which to complete the investigation.
79. It is possible to seek one or more extensions of time from the Ombudsman.
80. A request to the Ombudsman for an extension of time must be made where an investigation has not been completed within 70 days of the date the disclosure was allocated.
81. The Ombudsman has indicated that an 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.
82. An investigation that is not completed within time does not become invalid.

CHAPTER 8 – REPORTS OF INVESTIGATIONS

83. In preparing a report of an investigation under the PID Act, the investigator must comply with the PID Act, the Ombudsman's Standard and these procedures.
84. A report of an investigation under the PID Act must set out:
 - a. the matters considered in the course of the investigation, and
 - b. the duration of the investigation, and

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- c. the investigator's findings (if any), and
- d. the action (if any) that has been, is being or is recommended to be taken, and
- e. any claims made about, and any evidence of, detrimental action taken against the discloser, and the Agency'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, and
- g. identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates, and
- h. explain the steps taken to gather evidence, and
- i. set out a summary of the evidence, and
- j. set out any recommendations made based on that evidence.

85. Where an investigator has completed a report of an investigation under the PID Act, and where they have been given the discloser's contact details, the investigator must, as soon as practicable, advise the discloser in writing by completing **Form 7**:
- a. that the report has been completed, and
 - b. whether the report was completed within the time limit provided for by the PID Act.
86. The investigator must, within a reasonable time of preparing a report of an investigation under the PID Act, give a copy of the report to the discloser.
87. Despite paragraph 86, the investigator may delete from the copy of the report given to the discloser any material:
- a. that is likely to enable the identification of the discloser or another person, or
 - b. 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.
88. Despite paragraph 86, 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.

CHAPTER 9 – CONFIDENTIALITY

89. 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).
90. Any interviews conducted by an Authorised Officer or delegates (including investigators) should be conducted in private.
91. Any interviews with the discloser should be arranged so as to avoid the identification of the discloser by other staff of the agency.

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CHAPTER 10 – RECORD-KEEPING

92. Where an Authorised 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, delegates (including investigators) or other employees in the Agency who require access in order to perform some function under the PID Act or for the purposes of another law of the Commonwealth (for example, under the *Work Health and Safety Act 2011* or the *Public Service Act 1999*).
93. Where a form is required to be sent under these procedures, a copy of the form must be kept.
94. 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.
95. Any email messages sent by Authorised Officers or delegates that contain identifying information must be clearly marked 'to be read by named addressee only'.
96. Where a person will cease being an Authorised Officer in the Agency (including because of resignation or movement to another agency), their PID records must be transferred to another Authorised Officer in the Agency.

CHAPTER 11 – MONITORING AND EVALUATION

97. Each Authorised Officer must provide a monthly report to the principal officer specifying the number of public interest disclosures received by the Authorised Officer and the nature of the disclosable conduct for each disclosure (by reference to the relevant item or paragraph in the definition). The report must also include any disclosures that have been allocated to the agency by another agency's Authorised Officer.
98. The principal officer will appoint a delegate to collate the agency's report to the Ombudsman on disclosures made during the financial year (the monitoring delegate).
99. Each investigator must advise the monitoring delegate of every decision made by the investigator to investigate a disclosure during the financial year.
100. Each delegate of the principal officer who takes action in response to a recommendation made in an investigation report must make a report of this action to the monitoring delegate.
101. The monitoring delegate must prepare the agency's report for the principal officer consideration within the time specified by the principal officer.

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.