

Public Interest Disclosure Procedure

Purpose and scope

The *Public Interest Disclosure Act 2013 (PID Act)* operates on and from 15 January 2014.

The purpose of the Act is to encourage and facilitate the disclosure and proper investigation of, and response within government to, wrongdoing and maladministration in the Commonwealth public sector.

Section 59 of the PID Act requires the CEO to establish procedures for facilitating and dealing with public interest disclosures relating to AFTRS, and stipulates that these procedures must:

- assess risks that reprisals may be taken against disclosers;
- provide for confidentiality of investigative processes; and
- comply with the standards made under the Act.

Statement of AFTRS' commitment

AFTRS is committed to the highest standards of ethical and accountable conduct in the performance of its functions, and to protecting people who disclose reasonably suspected mismanagement, corruption, illegality, or some other wrongdoing occurring at AFTRS, whether they do this openly or anonymously.

Relationship with other incident, complaint and investigative mechanisms

The PID Act procedures are in addition to management action and other appropriate avenues for resolving issues. For example, a disclosure may be dealt with in accordance with the Commonwealth's *Fraud Control Guidelines* instead of under the PID Act.

The Commonwealth Ombudsman's view is that:

...This does not mean that every complaint about workplace conduct should be treated by managers, supervisors and authorised officers as a public interest disclosure, particularly as one of the grounds for not investigating a matter under the PID Act is that it is not 'serious disclosable conduct'...

Agencies need to steer a path between encouraging staff and former staff to bring forward genuine concerns about workplace issues so that appropriate action can be taken, and avoiding setting such a low threshold for public interest disclosures that supervisors and managers are swamped either with unfounded suspicions or with formal PID Act processes where prompt resolution would be better. Relevant factors to consider include the seriousness of the alleged wrongdoing and the need to protect the person making the report...

4. Procedure

4.1 Notice of Authorised Officers

The responsible officer under this Procedure must arrange for the position titles of AFTRS' staff who are authorised officers under the PID Act, and their contact details, to be made available on AFTRS' public website.

4.2 Making a public interest disclosure

Who can make a public interest disclosure?

A *public official*, as defined in subdivision A of division 3 of Part 4 of the PID Act, may disclose information that tends to show, or that he or she believes on reasonable grounds tends to show, *disclosable conduct*. *Disclosable conduct* is the conduct described in Attachment 1 to this procedure.

Public officials relating to AFTRS include people who are, or have been:

- an AFTRS' CEO;
- Council member;
- staff member;
- casual employee;
- sole trader contractor; or
- an officer or employee of a company/trust/partnership contractor to AFTRS.

They also include APS employees, statutory office holders and people who exercise powers under a Commonwealth law.

In certain circumstances, an AFTRS' authorised officer may deem a person to be a *public official*, for example an AFTRS' volunteer or an independent member of an advisory committee, such as the Finance, Audit and Risk Management (**FARM**) Committee or the Academic Board.

Who can a public interest disclosure be made to?

Internal disclosures

For a disclosure of *disclosable conduct* to be made to AFTRS under the PID Act, the public official (including a deemed public official) wishing to disclose the information (**discloser**) must make the disclosure to:

- the person who currently supervises or manages them; or
- an AFTRS' authorised officer who is not their supervisor; or
- AFTRS' CEO.
- AFTRS' authorised officers, in addition to the CEO, currently are:
- Chief Operations Officer;
- Director, Technology and Infrastructure; and

- Head of Business Affairs.

Instead of making a disclosure to AFTRS:

- if a public official has information about wrongdoing in another agency, they can make a disclosure to an authorised officer in that other agency. A public official may wish to do this, for example, if the wrongdoing concerned conduct in their previous workplace;
- if a public official believes on reasonable grounds that it would be appropriate to do so, make a disclosure to an authorised officer of the Commonwealth Ombudsman; or
- if the matter involves an intelligence agency or intelligence-related information, a public official may make a disclosure to the intelligence agency or to an authorised officer of the IGIS if they believe on reasonable grounds that it would be appropriate for the IGIS to investigate.

External disclosures

There are limited circumstances in which a public interest disclosure (that does not include *intelligence information* or *sensitive law enforcement information* or concern an *intelligence agency*) may be made to other people, as follows:

- in certain circumstances after an internal disclosure has been made; or
- if a public official believes on reasonable grounds that the information they have concerns a substantial and imminent danger to the health or safety of people or to the environment; or
- to an Australian legal practitioner for the purpose of seeking legal advice or professional assistance in relation to making a disclosure.

Where an internal disclosure has been made, an external disclosure may only be made if the external disclosure is not on balance contrary to the *public interest* and either:

- the internal investigation was not completed within the prescribed time; or
- the discloser believes on reasonable grounds that the investigation was inadequate; or
- the discloser believes on reasonable grounds that AFTRS took inadequate action after the investigation was completed.

The PID Act specifies factors that must be taken into account when determining that a potential disclosure is not contrary to the public interest – see s26 (3).

Generally, the discloser must not disclose more information than is necessary to identify the wrongdoing.

How is a public interest disclosure to be made?

The discloser is entitled to give the information anonymously. Alternatively, they may be happy for their name and contact details and other identifying information to be known.

The discloser needs to tell the first person they disclose the information to whether or not they wish to be anonymous. If a disclosure is made from an email address from which a person's identity cannot be determined, and

the discloser does not identify themselves in an email, the disclosure is to be treated as anonymous. The discloser is also to be treated as a public official, unless there is evidence to the contrary.

While a discloser is entitled to remain anonymous, there are reasons why a person may consider it beneficial to identify themselves, which include the following:

- subject to limited exceptions, a discloser's identity will be kept confidential;
- it is easier to protect the discloser from reprisals if their identity is known;
- if the discloser cannot be contacted for additional information, the matter may not proceed; and
- the discloser will not be updated on the progress of the matter, including on the outcome of the investigation.
- If a discloser first gives information anonymously, they can at any time disclose their identity.

The discloser may give the information orally, for example, in a phone call or in person, or in writing, for example by email. The discloser may use a form created by AFTRS for the purpose of these kinds of disclosures, but is not required to do so. However, it is useful for AFTRS if disclosers cover as many of the following matters as possible in their disclosure:

- name and contact details (unless anonymous);
- nature of the wrongdoing;
- who they think committed the wrongdoing;
- when and where the wrongdoing occurred;
- relevant events;
- if they did anything in response to the wrongdoing;
- others who know about the wrongdoing and have allowed it to continue;
- whether they believe their information is a public interest disclosure (although they are not required to mention the PID Act when they give information, or make a disclosure);
- if they are concerned about possible reprisals as a result of the disclosure;
- supporting documents, for example file notes; and
- names of witnesses.

Disclosures must be clear and factual and avoid emotive language, speculation and personal attacks.

Once a person makes a disclosure, they must not discuss the details of it with anyone who does not need to know. Disclosers must be discreet.

Disclosers or potential disclosers need to be aware that making a disclosure does not necessarily protect them from the consequences of their own wrongdoing. Intentionally false or misleading disclosures are also not protected under the PID Act.

Disclosers are not to investigate matters themselves before making a disclosure.

A copy of any written disclosure of public interest information must be forwarded to the Head of Business Affairs for entry into the *AFTRS Public Interest Disclosure Register*.

4.3 Protecting a public interest discloser

AFTRS will handle each public interest disclosure confidentiality and discreetly, and will protect a public interest discloser in accordance with the PID Act.

AFTRS will make every reasonable effort to protect a discloser's identity. There are offences under the PID Act relating to misuse of a discloser's identifying information. In addition, AFTRS is required by the *Privacy Act 1988* to store personal information securely and to limit its disclosure and use. However, the protection of a discloser's identity cannot be absolute. Identity may need to be disclosed, for example, to investigate the matter or to protect a discloser against reprisals. People may guess a discloser's identity.

To protect a discloser's identity, people dealing with public interest disclosures to AFTRS under the PID Act, such as supervisors, authorised officers and investigators, must:

- limit the number of people who are aware of the discloser's identity or information that would identify them;
- remind each person who has the information that they must keep it confidential and that unauthorised disclosure or use may be a criminal offence; and
- ensure the discloser can communicate with a support person, authorised officer or investigator without alerting other staff.

A supervisor must obtain the discloser's consent to them passing on the discloser's identifying information. If the consent is not given in writing, the supervisor must make a written record of the discloser's consent.

See **paragraph 4.5** for AFTRS' procedure relating to protecting a discloser from the risk of reprisals.

See **paragraph 4.8** for AFTRS' procedure relating to keeping a disclosure matter confidential.

The authorised officer is responsible for informing a discloser or potential discloser of the steps AFTRS takes to protect them.

4.4 Receiving a public interest disclosure

The AFTRS' CEO, another AFTRS' authorised officer, or a discloser's supervisor, may receive a public interest disclosure.

If a disclosure is received orally, the person receiving the disclosure must make a written record of it, and ask the discloser to sign it as correct.

Receipt by supervisor

If a supervisor receives a public interest disclosure, the supervisor must decide whether they have reasonable grounds to believe the information they are given concerns, or could concern, *disclosable conduct*.

If the supervisor decides:

- they have **no** reasonable grounds for believing the information concerns or could concern *disclosable conduct*, the supervisor must note this on a written report they must give to an authorised officer; or

- they have reasonable grounds to believe the information they are given concerns, or could concern, *disclosable conduct*, and they are not an authorised officer, the supervisor must give the information in a supervisor's report to an authorised officer, as soon as reasonably practicable after receiving the information.

The supervisor must let the discloser know that the discloser's report will be treated as a public interest disclosure, will be referred to an authorised officer, and give the discloser information about the protections under the PID Act, or refer the discloser to an authorised officer who can do so.

A supervisor may also be asked by an authorised officer to carry out a risk assessment that reprisals may be taken against a discloser.

Receipt by authorised officer, including the CEO

If a person discloses, or proposes to disclose, information and the authorised officer has reasonable grounds to believe that:

- the information concerns, or could concern, *disclosable conduct*; and
- the person may be unaware of what the PID Act requires for the disclosure to be an internal disclosure under the PID Act,

the authorised officer must:

- inform the person that the disclosure could be treated as an internal disclosure under the PID Act; and
- advise the person of any orders or directions of which the authorised officer is aware that are designated publication restrictions that may affect disclosure of the information.

Deemed public official

If a person discloses or proposes to disclose information and the person was not a public official at the time they obtained the information, for example they were a volunteer or an independent advisor on a committee, an authorised officer may deem the discloser to be a public official. An authorised officer may do this on their own initiative or at the discloser's request.

An authorised officer must notify the discloser in writing if the authorised person makes this determination. If the discloser has requested, but the authorised officer refuses to make the determination, the authorised officer must also notify the discloser in writing of their refusal, and the reasons for it.

4.5 Assessing and dealing with risk of reprisals

An authorised officer must carry out an assessment of the risk that reprisals may be taken against a discloser as soon as possible after they receive a disclosure or after they have been notified that a disclosure about AFTRS has been received by another agency, such as the Commonwealth Ombudsman.

Alternatively, the authorised officer may ask a discloser's supervisor to do this, for example, if a disclosure is first made to the supervisor and the discloser wishes to be anonymous.

The person carrying out the risk assessment may ask the discloser and their supervisor about the reported wrongdoing and who the discloser may fear reprisals from. Reprisals may take the form of inappropriate workplace conduct such as harassment, intimidation, undermining of authority, ostracism, humiliation, questioning of motives or heavier scrutiny of work.

The risk assessment is to be conducted in four steps. These are:

1. **Identifying** the risk of actual or potential reprisals or workplace conflict. For example, indicators of a higher risk of reprisals or conflict have been said to include threats or past experience, where confidentiality is unlikely to be maintained, where there is significant reported wrongdoing, and where there is a vulnerable discloser.
2. **Assessing** the likelihood and consequences of reprisals or conflict. Consequences may be to the discloser and to AFTRS.
3. **Controlling** the risks by implementing strategies to prevent or contain reprisals or conflict in consultation with the discloser. A strategy may be to appoint a support person for the discloser or to remind staff that taking or threatening a reprisal is a criminal offence.
4. **Monitoring and reviewing** strategies for effectiveness, including by asking the discloser.

If an allegation of a reprisal is received, the person receiving it, if not an authorised officer or an investigator, must pass it on to an authorised officer, who must pass it on to the relevant investigator. The investigator must record the allegation and respond to it.

In addition, everyone involved in handling a public interest disclosure, such as the supervisor, authorised officer and investigator must monitor the workplace for signs of detriment to the discloser, and pass on any relevant evidence of detrimental action to the investigator and appropriate action must be taken.

4.6 Allocating a public interest disclosure

No allocation

An authorised officer may decide **not** to allocate a disclosure if they are satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered an *internal disclosure*.

*A disclosure is an internal disclosure if it is made to an **authorised officer** or a **supervisor** of the discloser and the information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of **disclosable conduct**.*

If an authorised officer decides not to allocate a disclosure, the authorised officer must, unless contacting the discloser is not reasonably practicable, inform the discloser of:

- the reasons why the disclosure has not been allocated; and
- any other courses of action that might be available to the discloser under other Commonwealth laws, for example, in relation to a workplace grievance.

Allocation

If an authorised officer decides to allocate a disclosure, the authorised officer must allocate its handling to one or more agencies, using their best endeavours to decide the allocation **within 14 days after they receive the disclosure**.

The authorised officer may allocate the handling of the disclosure to AFTRS or another agency, having regard to:

the principle that an agency should not handle the disclosure unless some or all of the **disclosable conduct** with which the information may be concerned related to the agency; and such other matters as the authorised officer considers relevant.

To help the authorised officer make the allocation decision, they may obtain information from anyone and make any other inquiries.

While an AFTRS' authorised officer may allocate a disclosure to an agency that is not AFTRS, they cannot do so without **seeking and obtaining the consent of an authorised officer of the other agency**.

Reports of allocation

An authorised officer must inform the following people of the allocation:

- the discloser;
- the principal officer of the agency receiving the allocation. If the agency is AFTRS, then this is the CEO; and
- the Ombudsman.

The authorised officer must inform the principal officer and the Ombudsman of the following:

- the allocation to the agency;
- the information disclosed;
- any suspected *disclosable conduct*;
- if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the principal officer being informed – the discloser's name and contact details.

If there is evidence of criminal conduct, the authorised officer may need to consider referring the evidence to police.

4.7 Investigating a public interest disclosure

Who investigates a public interest disclosure?

AFTRS' CEO is responsible for investigating public interest disclosures under the PID Act. AFTRS' CEO may, and has, delegated this responsibility to a number of AFTRS' senior staff. The current delegates are as follows:

- Position 23, currently titled Chief Operations Officer;
- Position 72, currently titled Director, Technology and Infrastructure;
- Position 9, currently titled Head of Human Resources;
- Position 25, currently titled Head of Finance;
- Position 110, currently titled Head of Business Affairs; and

- Position 66, currently titled Head of Policy and Governance.

The CEO may delegate the responsibility for investigating a public interest disclosure to any public official, who may include people who are an officer or employee of a company contracted to AFTRS.

The CEO is to select the delegate who is to conduct a particular investigation, taking into account that the investigator is not to have an actual or perceived conflict of interest and their relationship to the workgroup where the alleged wrongdoing has occurred.

Any delegate selected to conduct a particular investigation must promptly disclose to the CEO any actual or perceived conflict of interest. In that event, the CEO may require the investigator to cease their investigation and select another delegate to act in their place.

Requirement or decision to investigate

Unless contacting the discloser is not reasonably practicable, within 14 days of the allocation of the disclosure to AFTRS, if this period is reasonably practicable, the investigator must inform the discloser either that:

- the investigator is required to investigate the disclosure and of the estimated length of the investigation; or
- the investigator has decided under s 48 of the PID Act not to investigate the disclosure, the reasons for the decision and any action that may be available to the discloser under other Commonwealth laws.

For example, an investigator may decide that the information disclosed does not concern **serious** disclosable conduct and on that basis not to investigate the disclosure.

How are investigations to be conducted?

General

Subject to the PID Standards, investigations are to be conducted as AFTRS' CEO or delegate think fit and they may obtain information from people and make inquiries as they think fit.

There is no power to compel witnesses to attend interviews, answer questions or produce documents. However, the CEO may ask any employee relevant questions about their employment.

Interviews

The investigator must ensure that people interviewed as part of the investigation are informed of:

- the identity and function of each individual conducting the interview;
- the process of conducting an investigation;
- the authority of the officer under the PID Act to conduct the investigation; and
- the protections provided by s 57 of the PID Act.

The investigator must also ensure that:

- an audio or visual recording of an interview is not made without the interviewee's knowledge;
- when an interview ends, the interviewee is given an opportunity to make a final statement or comment, or express a position; and
- any final statement, comment or position by the interviewee is included in the record of the interview.

Evidence gathering and assessment

The investigator must:

- decide whether evidence is sufficient to prove a fact on the balance of probabilities, that is whether it is more likely than not;
- ensure that a finding of fact is based on logically probative evidence, that is material that tends logically to prove the existence or non-existence of a fact; and
- ensure that the evidence relied on in the investigation is relevant, that is, that the evidence 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.

The person against whom allegations are made must be assumed innocent until proven otherwise. They must be given procedural fairness or 'natural justice'. Essentially this means that the person is entitled to:

- have a decision-maker act fairly and without bias;
- know the substance of allegations and evidence against them if an adverse finding is going to be made about their conduct; and
- have a reasonable opportunity to respond.

This does not mean that an investigator must tell the person against whom allegations are made about the allegations, or interview that person, as soon as the investigator starts the investigation. Investigators also do not need to tell alleged wrongdoers of allegations against them if they decide not to investigate a disclosure.

An investigator may consider support for any staff member alleged to be involved in wrongdoing and their identity is to be protected as far as practicable.

Duration of investigations

A report on an investigation must be completed within **90 days** after a disclosure is allocated to AFTRS, unless the Commonwealth Ombudsman extends this period. The Ombudsman may extend the period more than once.

As soon as possible after an investigator considers that more time is required to properly investigate a disclosure, the investigator must apply to the Commonwealth Ombudsman for an extension of time in the manner required or requested by the Ombudsman. The Ombudsman may require an application to include reasons why, in AFTRS' view, the investigation cannot be completed within the originally specified time, the views of the discloser, and an outline of action taken to progress the investigation.

The Ombudsman may ask AFTRS to notify a discloser of an extension of the period of investigation. If so, the relevant investigator must promptly do so. The investigator must also inform the discloser in writing, as soon as practicable after an extension is granted, about the progress of an investigation.

Completion of investigation

An investigation is not completed until the report of the investigation is written.

The written report must set out:

- the duration of the investigation;
- the matters considered in the course of the investigation;
- the findings;
- the action, if any, that has been, or is being, recommended to be taken, based on the evidence gathered;
- any claims made about, and any evidence of, detrimental action taken against the discloser, and AFTRS' response to those claims and that evidence.

The report must show that conclusions have been drawn based on sufficient, substantiating evidence.

A copy of the investigation report must be given to the discloser within a reasonable time after preparing the report, unless contacting the discloser is not reasonably practical. The investigator may delete from the copy of the report given to the discloser 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
- result in the copy being a document having, or being required to have, a national security or other protective security classification; or
- result in the copy containing intelligence information; or
- contravene a designated publication restriction.

The investigator must inform the alleged wrongdoer of the outcome of the investigation as it relates to them if the alleged wrongdoer is aware of the allegations or that there has been an investigation.

Appropriate outcomes may be commencing *Code of Conduct* proceedings, referring a matter to the police, mediation of a workplace conflict, an internal audit, changing policies or procedures or conducting staff training.

4.8 Confidentiality

Disclosures must be received, assessed, allocated and investigated confidentially, with particular emphasis on maintaining the confidentiality of a discloser and alleged wrongdoers.

In general, information received under the PID Act may only be disclosed and used for the purposes of the PID Act.

In order to comply with the confidentiality requirements:

- interviews should be conducted in private and discreetly;
- all information must be stored in files that:
- relate to one disclosure only;

- are kept securely; and
- are only accessed by people who need to see them for the purposes of the PID Act, for example authorised officers and investigators;
- all interviewees must be told that the matter being assessed or investigated is confidential, and that the release of any information about it may jeopardise an investigation and may be an offence;
- communications must not be sent to an email address to which other staff, such as administration coordinators, have access or to fax machines in open areas.

At the completion of an investigation, all files on the disclosure must be given to Business Affairs for secure storage.

4.9 Records

The Head of Business Affairs must keep records of disclosures under the PID Act to enable AFTRS to comply with its reporting obligations under the PID Act and Standards, for example to assist the Commonwealth Ombudsman to prepare an annual report under the PID Act.

Other AFTRS' public officials are required to complete the following records:

- Supervisors who receive a disclosure – *Supervisor Report to an Authorised Officer*;
- Authorised Officers who receive a disclosure – *Authorised Officer Assessment and Allocation Report*;
- Investigators who investigate a disclosure – *Investigator Assessment and Internal Report and Investigator Investigations, Findings and Recommendations Report*.

These records must be factual and be dealt with confidentially as described in **paragraph 4.8**.

4.10 Referring matters to Australian police member

If there is evidence of criminal conduct, the authorised officer may need to consider referring the evidence to a member of the Australian, State or Territory police.

Investigators who suspect on reasonable grounds that information disclosed or other information obtained in the investigation is evidence of the commission of an offence punishable by imprisonment for life or by imprisonment for at least two years, must notify a member of the Australian, State or Territory police. Investigators have a *discretion* to notify a member of the Australian, State or Territory police, where the information obtained discloses the commission of other offences.

If AFTRS knows that the police are investigating a matter, AFTRS' CEO may authorise the AFTRS' investigator to suspend their investigation.

Authorisation and Distribution

Authorisation	CEO
Date	11 November 2014

Responsible Officer	Chief Operations Officer
Contact Officer	Head of Business Affairs
Effective Date	21 January 2016
Distribution	Intranet and website
Review Date	11 November 2017
Current version	v1.2 21 January 2016
Supersedes	v1.1 11 November 2014
Associated Documents	Public Interest Disclosure Act 2013 Public Interest Disclosure Standard 2013

Attachment

No.	Disclosable conduct
	Conduct that contravenes an Australian law
	Conduct, in a foreign country, that contravenes a law that: <ul style="list-style-type: none"> (a) is in force in the foreign country; and (b) applies to the agency, public official or contracted service provider; and <ul style="list-style-type: none"> (c) corresponds to a law in force in the Australian Capital Territory.
	Conduct that: <ul style="list-style-type: none"> (a) perverts, or is engaged in for the purpose of perverting, or attempting to pervert, the course of justice; or (b) involves, or is engaged in for the purpose of, corruption of any other kind.

	<p>Conduct that constitutes maladministration, including conduct that:</p> <p>(a) is based, in whole or in part, on improper motives; or</p> <p>(b) is unreasonable, unjust or oppressive; or</p> <p>(c) is negligent.</p>
	<p>Conduct that is an abuse of public trust.</p>
	<p>Conduct that results in the wastage of:</p> <p>(a) public money (within the meaning of the <i>Financial Management and Accountability Act 1997</i>); or</p> <p>(b) public property (within the meaning of that Act); or</p> <p>(c) money of a prescribed authority; or</p> <p>(d) property of a prescribed authority.</p>
	<p>Conduct that:</p> <p>(a) unreasonably results in a danger to the health or safety of one or more persons; or</p> <p>(b) unreasonably results in, or increases, a risk of danger to the health or safety of one or more persons.</p>
	<p>Conduct that:</p> <p>(a) results in a danger to the environment; or</p> <p>(b) results in, or increases, a risk of danger to the environment.</p>
	<p>Conduct engaged in by a public official that involves, or is engaged in for the purpose of, the public official abusing his or her position as a public official.</p>
	<p>Conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action against the public official.</p>