

Public Interest Disclosure (Whistleblowing) Procedure

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1. Introduction and Purpose

The *Public Interest Disclosure Act 2013* (PID Act) operates on and from 15 January 2014 with amendments to the PID Act made in July 2023.

The *Public Interest Disclosure Act 2013* (Cth) (PID Act) requires the principal officer of an agency to establish procedures for facilitating and dealing with public interest disclosures relating to the agency. The principal officer may delegate any of their functions or powers to a public official who belongs to their agency.

This document provides an overview of procedures under the PID . AFTRS has a separate internal guide to investigation steps under the PID Act, which provides a framework for assessing disclosures that may fall within the PID Act scheme, allocating to the appropriate officer for investigation, steps to be undertaken in an investigation and preparation of an investigation report. It also incorporates detailed guidance on factors such as confidentiality, conflicts of interest, and communication with the discloser during the process.

The purpose of the PID Act is to facilitate the disclosure and investigation of wrongdoing and maladministration of the Commonwealth public sector by:

- encouraging and facilitating the disclosure of information of suspected wrongdoing in the public sector,
- ensuring that public officials who make public interest disclosures are supported and protected from adverse consequences; and
- ensuring that disclosures are properly investigated and dealt with.

Public interest disclosure is known as *whistleblowing* in sectors outside of the Commonwealth public sector. The PID Act gives each agency a central role in handling public interest disclosures (PID) about their agency, and from their officials, and managing any related reprisal risk.

2. 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.

3. What is a public interest disclosure?

A public interest disclosure may be an internal disclosure, a legal practitioner disclosure, an external disclosure or an emergency disclosure. If a person makes a disclosure except in these circumstances, they are not protected from the consequences of breaching any privacy or confidentiality requirements that apply to the disclosed information.

An internal disclosure is the most common type of disclosure under the PID Act. To make an internal public interest disclosure, the person disclosing a suspected wrongdoing must:

- be a current or former public official (or deemed to be a public official)
- make their disclosure to the correct person within AFTRS (their supervisor or PID Officer), and
- provide information that they believe tends to show, on reasonable grounds, disclosable conduct within the AFTRS or by a public official.
- In limited circumstances a public official may disclose such information to a person outside government. They can also make a disclosure to a legal practitioner for the purposes of getting advice about making one of the other forms of public interest disclosure. Further information about these disclosures can be obtained from the Commonwealth Ombudsman's website.

4. Relationship with other incident, complaint and investigative mechanisms

The PID Act procedures are in addition to management action and other appropriate avenues within AFTRS for raising and resolving issues.

While the PID framework continues to facilitate disclosures about a wide range of integrity wrongdoing; disclosures about personal work-related conduct are not covered by the PID Act, unless the conduct constitutes reprisal action, or the conduct is of such a significant nature it would undermine public confidence in, or has other significant implications for, an agency.

As previously guided by the Commonwealth Ombudsman '...every complaint about workplace conduct should not 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 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....'

If however, a disclosure relates to both personal work-related conduct and other types of wrongdoing, it will still be covered by the PID Act as long as the other type of wrongdoing it will still be covered by the PID Act as long as the other type of wrongdoing meets the definition of disclosable conduct.

5. Procedure

Who can make a public interest disclosure?

- 5.1. A person must be a current or former employee of AFTRS to make a public interest disclosure i.e. a public official.
- 5.2. An authorised officer may deem an individual to be able to make a disclosure if they reasonably believe the individual has information about wrongdoing and propose to make a disclosure.
- 5.3. All public officials have an obligation to report serious wrongdoing by another public official in the course of, or in connection with, their AFTRS employment. Public officials must make any report based on information that they believe on reasonable grounds may provide evidence of behaviour that is disclosable conduct.

What is disclosable conduct?

- 5.4. A In summary, disclosable conduct is conduct by an agency, a public official, or a government contractor that:
 - contravenes a law
 - perverts the course of justice
 - is corrupt
 - is an abuse of public trust
 - results in wastage of public money or property
 - unreasonably endangers health and safety or endangers the environment, and
 - is maladministration, including conduct that is unjust, oppressive or negligent.

How to make a public interest disclosure

- 5.5. A disclosure must be made to an appropriate person in order to gain the protections available under the PID Act. The PID Act focuses on the reporting and investigating of wrongdoing within government (internal disclosures), but allows for reporting outside government in specified circumstances.

Internal disclosure to the agency

- 5.5.1. An internal disclosure attracts the protections of the PID Act for the discloser and brings into play obligations for AFTRS and the official who receives it.
- 5.5.2. Making a disclosure internally gives AFTRS the chance to investigate the matter and remove any danger or correct any wrong practices as quickly as possible.
- 5.5.3. A public official can make an internal disclosure to their supervisor or an authorised officer in:
 - their current agency
 - the agency to which they previously belonged, or
 - the agency to which the disclosure relates.

Internal disclosures to authorised officers at AFTRS?

- 5.5.4. Authorised officers at AFTRS are the Principal Officer ((i.e. the agency head, AFTRS' CEO, Dr Nell Greenwood) and officers that the Principal Officer appoints as authorised officers under the PID Act.
- 5.5.5. Appointed authorised officers can be found on the [AFTRS' PID page](#) on the AFTRS website.

Internal disclosures to a supervisor

- 5.5.6. A supervisor/manager who receives a disclosure from someone they manage or supervise is obliged to give the information to an authorised officer as soon as reasonably practical.
- 5.5.7. The supervisor's obligation applies as soon as the supervisor has reasonable grounds to believe the information could concern one or more instances of disclosable conduct.

Disclosure to the Ombudsman

- 5.5.8. A public official can also make a disclosure to authorised officers of the Commonwealth Ombudsman, if they believe on reasonable grounds that it would be appropriate for the Ombudsman to investigate.

Complaint to the Ombudsman

- 5.5.9. A public official can make a complaint to the Ombudsman if they believe the agency that received their internal disclosure did not appropriately deal with it.

Responsibilities under the PID Act

Authorised officer responsibilities

- 5.6. Authorised officers are officers authorised by the AFTRS CEO for the purposes of the PID Act. They have a range of decision-making, notification and other responsibilities under the PID Act, including:
- receiving disclosures from current or former employees
 - receiving disclosures from other public officials about conduct concerning AFTRS
 - deeming a person to be a public official to allow them to make a public interest disclosure
 - confronting any workplace prejudices about making a disclosure
 - supporting an employee who they know has made a public interest disclosure and ensuring they are protected from reprisal
 - ensuring identified problems in the workplace are corrected, and
 - the keeping of all records provided and retaining copies of all notifications in an official file until the matter is completed.

All staff responsibilities

- 5.7. The PID Act requires all staff to use their 'best endeavours' to assist the CEO in investigating, and to assist the Ombudsman in their functions.
- 5.8. Staff are expected to share general responsibility for ensuring the system works effectively by:
- reporting matters where there is evidence that shows or tends to show disclosable conduct
 - identifying areas where there may be opportunities for wrongdoing to occur because of inadequate systems or procedures, and proactively raising those with management
 - maintaining confidentiality whenever they are aware of the identity of a discloser, of anyone against whom an allegation has been made, or of anyone who has contributed to a disclosure investigation
 - supporting staff known to have made public interest disclosures, and
 - reporting to an appropriate person (a supervisor or authorised officer) any threats or reprisal action in relation to a disclosure.

Initial information for a discloser

Can a discloser be anonymous or use a pseudonym?

- 5.9. Disclosers do not have to identify themselves and may remain anonymous. Remaining anonymous means disclosers do not identify themselves at any stage to anyone, including the authorised officer who receives the disclosure. If the disclosure comes from an email address from which the person's identity cannot be determined, and the discloser does not identify themselves in the email, it will be treated as an anonymous disclosure.
- 5.10. Alternatively, a discloser may wish to use a pseudonym throughout the PID process. This may be appropriate in circumstances where the discloser is identifiable to their supervisor or an authorised officer but decides to hide their identity to others.
- 5.11. The PID Act requires agencies to keep a discloser's identity confidential, subject to limited exceptions.

Protection for the discloser

- 5.12. A person who makes a disclosure about disclosable conduct in compliance with the PID Act will be covered by a range of legislated protections.
- 5.13. The PID Act provides for:
- reporting protection of the discloser's identity
 - immunity from civil, criminal, or administrative liability, and
 - support and protection from direct and indirect reprisal.
- 5.14. Even if the disclosed information turns out to be incorrect or unable to be substantiated, a discloser is protected by the PID Act, if they:
- made their disclosure to an appropriate person under the PID Act
 - honestly believed on reasonable grounds that the information tended to show disclosable conduct, and
 - did not knowingly make false or misleading statements.
- 5.15. A person who makes a disclosure that is intentionally false or misleading will not gain the protections under the PID Act and making a disclosure does not automatically protect the discloser from the consequences of their own wrongdoing, including where they have been involved in the misconduct they are reporting.

Obligations of a discloser

- 5.16. Disclosers should not discuss the details of their disclosure with anyone who does not need to know about it.
- 5.17. Discussions with people who are not performing a function under the PID Act will not be for the purposes of the PID Act and would therefore not be covered by the protections in the PID Act.
- 5.18. All public officials must use their best endeavours to assist in any investigation. The discloser should therefore be prepared to provide further information to help the investigator, as this will often be required.

Initial assessment of the disclosure

- 5.19. When an authorised officer receives a disclosure, they must consider the disclosed information and decide whether it meets the criteria for an internal disclosure under the PID Act and whether they are an authorised internal recipient for that disclosure.
- 5.20. The PID Act requires the authorised officer to use their best endeavours to assess and allocate a disclosure within 14 days of receiving it, unless there is a good reason why they need further time.
- 5.21. If the authorised officer concludes that the disclosure does not meet the legislated requirement for an internal disclosure, they must explain this to the discloser and explain any other options that they might have under Commonwealth law, for example, in relation to a workplace grievance.
- 5.22. The authorised officer may allocate the handling of the disclosure to one or more agencies, the Ombudsman, the IGIS or a prescribed investigative agency. In most cases, a disclosure should be allocated to the agency to which the disclosure relates.
- 5.23. Furthermore, the authorised officer has a mandatory referral obligation under the National Anti-Corruption Commission Act 2022 (NACC Act) if:
- in the course of exercising their functions or powers they handle an internal disclosure that raises a corruption issue under the NACC Act,
 - the officer suspects the issue could involve serious or systemic corrupt conduct.
- 5.24. When the above criteria are met, the officer must refer the corruption issue to the NACC as soon as reasonably practicable after becoming aware of the issue, unless a specified exception applies.

Investigations

Requirement to investigate a disclosure

- 5.25. In the circumstances following the referral of a corruption issue to the NACC an authorised officer is still required to handle or deal with the internal disclosure in accordance with the PID Act, unless the National Anti-corruption Commissioner has issued a stop action direction.
- 5.26. In other circumstances, once a disclosure has been allocated for handling under the PID Act, the principal officer is obliged to investigate it.
- 5.27. The PID Act requires the principal officer or their delegate to investigate a disclosure allocated to that agency for handling under the PID Act (the exception is where the principal officer or their delegate decides not to investigate the disclosure).
- 5.28. Agencies allocated a disclosure will inform the discloser about the principal officer's powers to decide not to investigate the disclosure under the PID Act, or to stop a PID investigation that has started, or to investigate the disclosure under a separate investigative power.
- 5.29. The discloser will be given this information within 14 days after the disclosure is allocated to the agency if it is reasonably practicable to do so.
- 5.30. The investigator must advise the discloser of the estimated length of their investigation. The PID Act requires an investigation to be completed within 90 days of allocation. If a longer time is required, the agency will be required to seek an extension of time from the Ombudsman.
- 5.31. The principal officer or their delegate may decide not to investigate a disclosure or, during a PID investigation decide that it is inappropriate to continue the investigation. In these circumstances they must prepare written reasons for their decision and notify the discloser and the Ombudsman.

General principles of an investigation

- 5.32. The following general principles will apply to the conduct of investigations:
 - maintaining the confidentiality of the identity of the discloser
 - the investigation will be conducted in accordance with the principles of procedural fairness
 - a person who is the subject of the investigation will have an opportunity to respond or provide information
 - in the event that an interview is to be conducted, it will be conducted in a manner consistent with the Public Interest Disclosure Standard 2013 (or any other relevant standard made under the PID Act), and
 - a decision on whether evidence is sufficient to prove a fact will be determined on the balance of probabilities.

STANDARD OF PROOF

- 5.32.1. The investigator must determine whether evidence in an investigation is sufficient to prove a fact. A fact is taken to have been proven on the balance of probabilities if the investigator is satisfied it is more likely than not that the fact is true.

EVIDENCE

- 5.32.2. The investigator must ensure that the evidence relied upon in an investigation is relevant. Relevant evidence is evidence that is of consequence to a matter under investigation and makes the evidence of a fact more probable or less probable than it would be without the evidence.

CONDUCTING AN INTERVIEW

- 5.32.3. The investigator must ensure that, if a person is interviewed as part of an investigation, the interviewee is informed of the following:
 - the identity and function of each person conducting an interview
 - the process of conducting the investigation
 - the authority of the investigator under the PID Act to conduct the investigation, and
 - the protections provided under the PID Act.

5.32.4. The investigator must ensure that:

- an audio or visual recording of the interview is not made without the interviewee's knowledge
- when the 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 interview.

Confidentiality and protection of disclosers and witnesses

5.33. The identity of disclosers is protected and remains confidential. Identification of disclosers will only occur in accordance with the PID Act or with the consent of the discloser.

5.34. A discloser or potential discloser is subject to protection from reprisal under the PID Act where they make or believe to have made, a disclosure, unless such a disclosure does not fall within the PID Act. A person who makes a disclosure will be protected from reprisal in the following ways:

- it is a criminal offence to cause detriment to a person because it is suspected or believed that they have made or will make a disclosure
- a discloser has the right to apply for an injunction to prevent a reprisal, and
- a discloser has the right to apply for compensation for loss, damage or injury suffered from a reprisal.
- AFTRS will not tolerate any reprisal action against a person who makes a disclosure.
- Every allegation of reprisal will be taken seriously, recorded and responded to. When a PID is received the authorised officer must conduct a risk assessment that considers the risk of reprisal action being taken against the discloser.
- All those involved in handling the disclosure and aware of the discloser's identity will monitor the work environment for signs of detriment and if necessary, take corrective action as early as possible. required.

5.35. Witnesses who assist with PID investigations have comparable protections to disclosers – protection against reprisal and immunity from civil, criminal and administrative liability.

Support for disclosers

5.35. The Regardless of the outcome of the risk assessment, the authorised officer, investigator, manager or supervisor will take all reasonable steps to protect public officials who have made a PID from detriment or threats of detriment.

5.36. This may include taking one or more of the following actions:

- appointing a support person to assist the discloser, who is responsible for checking on the wellbeing of the discloser regularly
- informing the discloser of the progress of the investigation
- advising the discloser of the availability of the Employee Assistance Program
- where there are any concerns about the health and wellbeing of the discloser, liaising with AFTRS' Human Resources, or
- transferring the discloser to a different area within the workplace (with the consent of the discloser).

After the investigation

5.37. Once the allegations in a disclosure have been investigated the person who is the subject of them will be formally advised of the outcome of the investigation as it relates to them. The person is not entitled to be told who made the disclosure.

- 5.38. The principal officer will take appropriate action in response to recommendations and other matters contained in the investigation report. These actions might include:
- commencing Code of Conduct proceedings or another disciplinary process
 - referral of the matter to the police or another body that can take further action
 - mediation or conciliation of a workplace conflict
 - recommendation for an internal audit or other review of an issue or the operations of a particular division/department/unit.
 - implementing or changing policies, procedures, or practices, or
 - conducting training and awareness sessions for staff.
- 5.39. There may be several reasons why a public interest disclosure is determined not to be substantiated. The discloser will be given as much information as possible about the outcome of the investigation consistent with confidentiality limitations. Regardless of the outcome, the discloser will still be protected under the PID Act for making a disclosure.

6. Policy management responsibilities

Compliance, monitoring and review

- 6.1. The Head of Governance with the support of the Policy and Governance Officer is responsible for ensuring the procedure:
- aligns with relevant legislation, government policy and/or AFTRS requirements/strategies/values;
 - is implemented and monitored; and
 - is reviewed to evaluate its continuing effectiveness.
- 6.2. The procedures will be reviewed every three years from the effective date or earlier or later depending on external factors such as legislative reform or internal policy review".

Reporting

- 6.3. AFTRS must provide the following information to the Ombudsman's office for the purpose of preparing the Ombudsman's annual report under the PID Act:
- the number of disclosures received by authorised officers of the OAIC during the relevant financial year
 - the kinds of disclosable conduct to which those disclosures related
 - the number of investigations conducted during the relevant financial year
 - the actions that were taken during the relevant financial year in response to recommendations in reports relating to those investigations, and
 - any other information requested by the Ombudsman.
- 6.4. The information must be provided to the Ombudsman within a time requested by the Ombudsman or as otherwise agreed with the Ombudsman.

Records management

- 6.5. The Policy and Governance Officer will maintain all records relevant to administering this policy and procedure.

7. Definitions

Personal work-related conduct: Where one official engages in conduct that relates to another official's engagement, appointment or the exercise of their functions or powers, and the conduct has personal implications for that second official. This includes, but is not limited to, bullying and harassment, conduct relating to the terms and conditions of engagement and disciplinary action (including Code of Conduct investigations).

Public official: includes staff members of Commonwealth agencies (AFTRS is a Commonwealth agency) including employees of Australian Government departments, Commonwealth companies and statutory bodies (AFTRS is also a statutory body) and contracted service providers (including consultants, independent contractors, labour-hire contractors, and others providing contracted services to the government which by extension is AFTRS). In summary a public official is a person who is or has been a public official (which includes all current and former AFTRS employees, contractors, consultants and AFTRS Council members).

Reprisal: is clarified as including harassment or intimidation, harm or injury to a person, and any damage to a person (including their property, reputation or business or financial position), in addition to the existing types of employment-related harm. It includes conduct that causes detriment as well as direct and indirect threats.

'Serious' and 'systemic': are not defined in the NACC Act and take their ordinary meaning.

8. Related Legislation and Documents

- Public Interest Disclosure Act 2013; and
- Public Interest Disclosure Standard 2013

9. Approval and Review Details

Approval and Review	Details
Approval Authority	CEO
Responsible Officer	Head, Governance
Contact Officer	Policy and Governance Officer
Distribution	BaseCamp and AFTRS website Staff and Public facing
Next Review Date	01/02/2027 Regular cycle of review – every three years from the effective date, or earlier or later, dependant on external factors such as legislative reform, unless another review schedule is required.

Approval and Amendment History	Details
Date and relevant amendments details	19 February 2024 — Restructuring of procedure and update to public facing procedural content.
Amendments History and Dates	02/10/2023 Interim review legislative amendments; 01/11/2020 —(Minor amendment) Use of updated template and update of positions; August 2020 —(Regular review) no amendments; September 2017 —(Regular review) no amendments; 11/11/2014— Implementation of Commonwealth PID replacing Whistleblower.

Notes	N/A
Minor Amendment Approval and History	<p>N/A</p> <p><<DD/MM/20YY — Xxxxx>></p> <ul style="list-style-type: none"> • [A minor amendment consists of an administrative edit made to the document or a change that is not material to the document. • The Responsible Officer can approve a minor amendment. • Insert the date that the Responsible Officer approved the minor amendment along with the details of the amendment (E.g., "01/12/2020 —administrative amendment: update of role titles aligned to restructure" or insert, if not relevant, N/A <p>[If making a minor amendment, <u>do not</u> amend details in the Original Approval Authority section nor amend the version number, only replace the new minor amendment approval date to the file]</p>