



Australian Government

Australian Transport Safety Bureau



ATSB HR POLICY AND PROCEDURES

Making a disclosure under the *Public Interest Disclosure Act 2013*

Australia's national transport safety investigator

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Australian Government

Australian Transport Safety Bureau

HR POLICY AND PROCEDURES

Procedures for facilitating and dealing with public interest disclosure relating to the Australian Transport Safety Bureau

I, Martin Dolan, Chief Executive Officer (CEO) of the Australian Transport Safety Bureau, hereby establish the following procedures for facilitating and dealing with public interest disclosures relating to the Australian Transport Safety Bureau (ATSB) made under the *Public Interest Disclosure Act 2013*.

The *Public Interest Disclosure Act 2013* is an important step in ensuring that the ATSB encourages a climate of trust where staff feel comfortable and confident about reporting wrongdoing. The ATSB Commission and Executive wholly support the public disclosure scheme and are committed to dealing with reports thoroughly and objectively and, if some form of wrongdoing is found, taking appropriate action to rectify it.

I commend the introduction of the *Public Interest Disclosure Act 2013* and encourage ATSB staff to familiarise themselves with the principles and procedures for making a public interest disclosure relating to the ATSB and to come forward if they suspect any form of wrongdoing.

In this instrument:

authorised officer means the principal officer of the Australian Transport Safety Bureau (ATSB) or a public official who belongs to the ATSB and is appointed in writing, by the principal officer as an authorised officer under section 36 of the *Public Interest Disclosure Act 2013* (PID Act).

CEO means the Chief Executive Officer of the ATSB.

principal officer means the CEO of the ATSB in accordance with Section 73 of the PID Act.

public interest disclosure broadly refers to the disclosure of information by a public official that is within the government to an authorised person or a supervisor, concerning suspected or probable illegal conduct or other wrongdoing

public official includes current or former public servants, service providers under a Commonwealth contract, statutory office holders and staff of Commonwealth companies

supervisor in relation to a person who makes a disclosure, is a public official who supervises or manages the person making the disclosure

A handwritten signature in black ink, appearing to read 'Martin Dolan'.

Martin Dolan
Chief Executive Officer
10 August 2015

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SECTION 1: Introduction

1A: About the ATSB's public interest disclosure procedures

The public interest disclosure scheme is established by the [Public Interest Disclosure Act 2013](#) (PID Act) with effect from 15 January 2014.

This document is issued in accordance with s 59 and the standards made under paragraph 74(1)(a) of the PID Act. It describes the procedures to be followed when making, receiving and dealing with public interest disclosures involving the ATSB.

1B: Purpose of the PID Act

The purpose of the PID Act is to promote the integrity and accountability of the Commonwealth public sector by:

- encouraging and facilitating the making of disclosures of wrongdoing by public officials
- ensuring that public officials who make protected disclosures are supported and protected from adverse consequences relating to the making of a disclosure
- ensuring that disclosures are properly investigated and dealt with.

The PID Act builds on practices established to protect public officials who 'blow the whistle' on suspected breaches of the *APS Code of Conduct* in the [Public Service Act 1999](#).

The PID Act is not intended to replace existing processes for dealing with workplace grievances and misconduct, such as bullying and harassment, but to supplement them.

1C: Organisational commitment

The APS Values and Code of Conduct set out the standards and behaviours expected of employees at all levels in the ATSB and across the APS.

The Australian community expects that the practices and actions of the ATSB and its employees achieve the best value for taxpayers. The ATSB and its staff must operate to the highest ethical standards and perform with accountable conduct.

The ATSB's Safety Investigation Quality System (SIQS) Policies and Procedures Manual requires that investigators ensure their personal standards of conduct and actions conform to the values established within the Public Service and would be able to withstand public scrutiny. The SIQS General Guidelines outline further the obligations for investigators in terms of their conduct, integrity, actions and communications.

The ATSB encourages people to come forward if they are aware of wrongdoing within the organisation. People who come forward and report wrongdoing are helping to maintain and promote integrity, accountability and good management within the ATSB.

The ATSB is committed to effectively dealing with and investigating any disclosure of wrongdoing and taking appropriate action if an investigation finds some form of wrongdoing.

All public interest disclosures made to the ATSB will be managed in accordance with these procedures and the PID Act, rules and standards.

**1D: Other
APS
legislation**

The PID Act complements other investigative and complaint schemes that apply to the Australian public sector. For example, an allegation that a public servant has breached the APS Code of Conduct can be investigated under the *Public Service Act 1999*.

Complaints about agency action can still be made to the Commonwealth Ombudsman or, in the case of intelligence agencies, to the Inspector-General of Intelligence and Security. Evidence of a criminal offence may be referred to police.

**1E: What is a
public
interest
disclosure?**

A public interest disclosure is a disclosure by a current or former public official of suspected wrongdoing in the Commonwealth public sector (see item 2A in Section 2, Making a Public Interest Disclosure)

A public interest disclosure may be an internal disclosure, an external disclosure or an emergency disclosure:

- An internal disclosure is made when a person who is or has been a public official discloses to their supervisor or manager, or an authorised officer of an agency information which tends to show, or the discloser believes on reasonable grounds tends to show, one or more instances of disclosable conduct.
- In limited circumstances a public official may disclose such information to a person outside government – this is known as an external disclosure or emergency disclosure.

The elements that make up a disclosure under the PID Act are illustrated in Figure A on the following page.

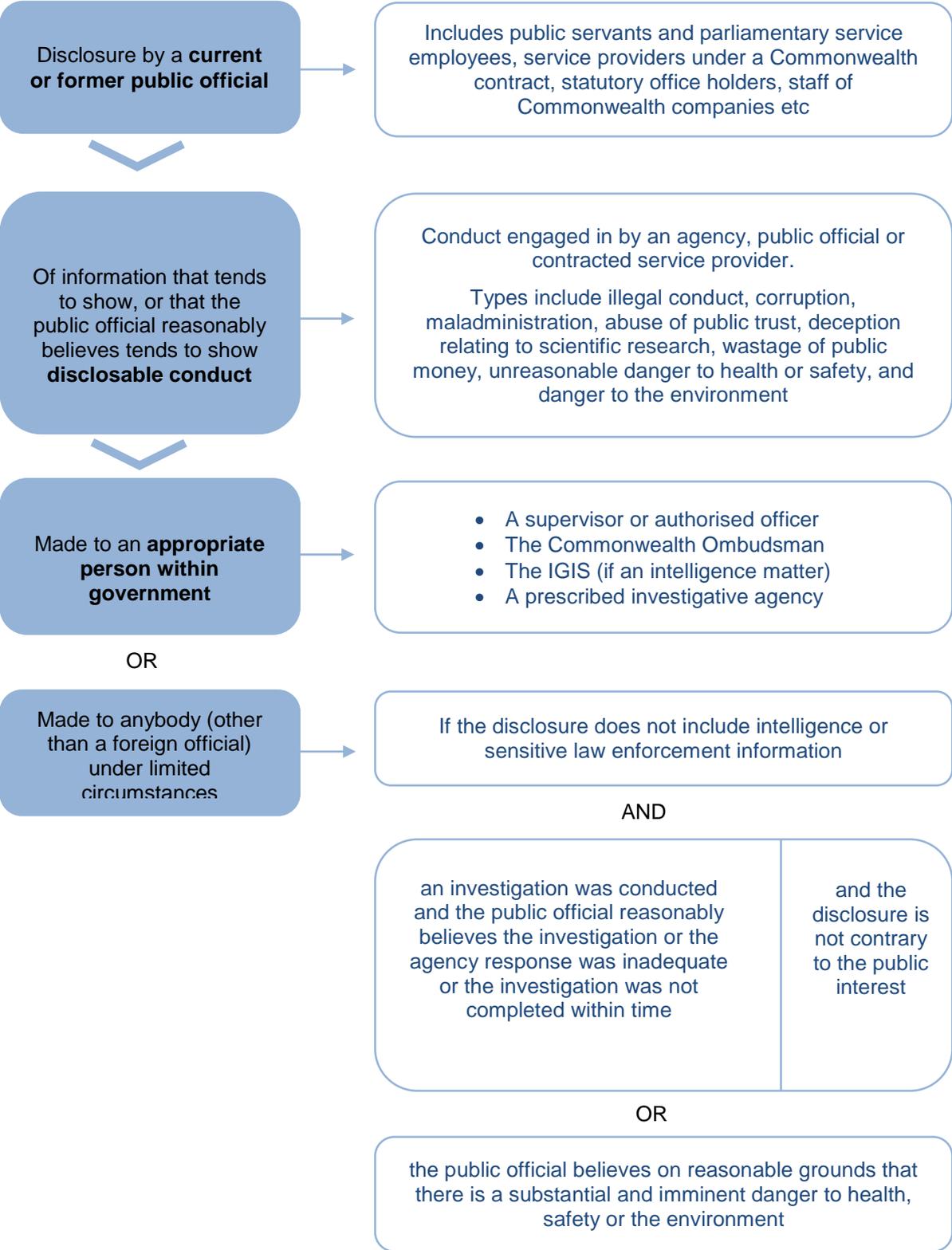
**1F: Who can
make a public
interest
disclosure?**

Public interest disclosures can be made by a current or former 'public official' which includes any person who is or was employed or appointed by the Australian Government.

A public official can disclose information that they believe shows 'disclosable conduct' by an agency, a public official or a contracted Commonwealth service provider.

Continued on next page

Figure A: What is a public interest disclosure?



Source: Commonwealth Ombudsman’s Agency Guide to the Public Interest Disclosure Act 2013.

SECTION 2: Making a public interest disclosure

A public official can disclose information that they believe, on reasonable grounds, tends to show 'disclosable conduct'. Disclosable conduct is conduct by:

- an agency
- a public official in connection with their position
- a contracted Commonwealth service provider in connection with entering into or giving effect to the contract

if that conduct:

- contravenes a Commonwealth, State or Territory law
- in a foreign country, contravenes a foreign law that applies to the agency, official or service provider
- perverts the course of justice
- is corrupt
- constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent
- is an abuse of public trust
- involves fabrication, falsification, plagiarism or deception relating to scientific research, or other misconduct in relation to scientific research, analysis or advice
- results in wastage of public money or public property
- unreasonably endangers health and safety
- endangers the environment
- is prescribed by the PID rules.

2A: What can be reported?

A person making a disclosure should report the matter as soon as possible and should not investigate the suspected wrongdoing themselves. The sooner a disclosure is raised, the sooner the ATSB can take action to deal with any wrongdoing.

The full definition of disclosable conduct is set out in [section 29 of the PID Act](#).

Disclosable conduct by a public official must be conduct in connection with their position as a public official. Conduct that is wholly private and has no bearing on their position as a public official is not disclosable conduct.

2B: What is not disclosable conduct?

Disclosable conduct does not include disagreement with:

- government policy or proposed policy
- action or proposed action by a minister, the Speaker of the House of Representatives or the President of the Senate
- expenditure or proposed expenditure related to such policy or action.

Matters of personal grievance or broader workplace disagreement are not covered by the PID Act.

2C: How to make a public interest disclosure

If a public official is considering making a disclosure, the public official can, in the first instance, seek advice from the Legal Services Unit.

Disclosures should be made to an Authorised Officer, orally or in writing, who is trained to receive public interest disclosures and can provide information

on the process to make a disclosure and the protections given to disclosers under the PID Act. You can contact an Authorised Officer by email at PID@atsb.gov.au. All Authorised Officers will be able to view all emails sent to PID@atsb.gov.au. If a discloser does not wish for one or more of the Authorised Officers to access the email, the discloser should note in the subject line “**PID: For [Authorised Officer’s name] Only**” or “**PID: Not for [Authorised Officer’s name]**”.

You can also make a report through the post at the address below:

For Authorised Officer Only
Public Interest Disclosure
Legal Services Unit
Australian Transport Safety Bureau
Lvl 2 East, 62 Northbourne Avenue
CANBERRA CITY 2602

Alternatively you can visit an authorised officer personally or call them over the telephone.

A list of the department’s Authorised Officers is located at the PID page on [the Hub](#).

Disclosures can also be made to supervisors or managers under the PID Act who will then be required to forward the disclosure to an Authorised Officer.

In certain circumstances, disclosures can also be made to the Commonwealth Ombudsman. Please refer to the Commonwealth Ombudsman’s website for more details.

A potential discloser should not investigate a matter themselves before making a disclosure.

This form can be delivered personally, mailed or emailed to the ATSB. The ATSB’s contact details are included on the form.

A discloser is not required to prove that what they suspect is true, as long as they honestly and reasonably believe it involves disclosable conduct. A disclosure should provide as much supporting information as possible to help the ATSB determine how to proceed. The information provided by the discloser might include:

2D: What information should be provided?

- name and contact details
- description of the suspected wrongdoing
- who they think committed the wrongdoing
- when and where the wrongdoing happened
- any relevant events surrounding the issue
- if they did anything in response to the wrongdoing
- others who know about the wrongdoing and have allowed it to continue
- if they are concerned about possible reprisal as a result of making a disclosure.

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

There is no required format for the making of a disclosure. A disclosure can be made:

-
- anonymously or openly;
 - orally or in writing;
 - without stating that the disclosure is made under the PID Act.

The ATSB has a *Report a public interest disclosure* form on its [website](#) and [The Hub](#) for making a disclosure.

Public officials can make anonymous disclosures if they wish to do so. A disclosure is considered anonymous if:

- the identity of the discloser is not revealed and if no contact details for the discloser are provided; or
- the discloser does not disclose their name but does provide anonymous contact details.

However, if a disclosure is made anonymously and no contact details are provided, it may prevent investigation of the disclosure.

There are reasons why disclosers should consider identifying themselves to an Authorised Officer, or at the very least providing a means of contact:

- the PID Act requires the ATSB to keep a discloser's identity confidential, subject to limited exceptions including the discloser's consent. The person's identity may nonetheless become apparent if an investigation is commenced;
- it is more difficult to ensure protection from reprisal if the department does not know the discloser's identity;
- the Authorised Officer who receives an anonymous report must have reasonable grounds to suspect the disclosable conduct has occurred in order to allocate the matter for investigation. If the Authorised Officer cannot contact the discloser to seek necessary further information, the matter may not proceed.
- An Investigator has the discretion not to investigate, or investigate further, if it is impracticable to investigate because the discloser has not provided their name and contact details or is unable to give the Investigators further information or assistance if needed; and
- a discloser who does not provide a means of contact cannot be updated on the progress of the matter, including the outcome of the investigation.

2E: Anonymous Disclosures

A person who has made an anonymous public interest disclosure may come forward at a later stage to disclose their identity and seek the protections of the PID Act.

Once a public interest disclosure has been made, it cannot be withdrawn. But a discloser may state that they do not wish the disclosure to be investigated and they may refuse to consent to their name and contact details being provided to the CEO or his delegates. A list of delegates can be found on [The Hub](#).

2F: What happens after a Disclosure

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.

2G: How is a person who makes a

The identity of a person who makes a disclosure will be kept confidential as far as practicable (see [Item 5A, Section 5, Confidentiality, Record Keeping and Monitoring and Evaluation](#)). It is an offence to provide identifying

disclosure protected?

information about a person who makes a disclosure without their consent unless authorised by the PID Act.

The person also has immunity from civil, criminal and administrative liability (including disciplinary action) for making the disclosure. It is a criminal offence to take or threaten to take a reprisal, such as discriminatory treatment, termination of employment or injury, against someone because they make a disclosure.

There are substantial penalties for reprisals and any person who fears reprisal for their disclosure should raise their concerns with the authorised officer dealing with their disclosure.

To gain the protections of the PID Act, a public official must comply with the Act. This means that if they disclose wrongdoing to someone who is not authorised to receive it, their disclosure will not be covered.

Support for disclosers will be provided in accordance with [Step 9 of Item 3C, Procedures for Authorised Officers](#).

A person who knowingly makes a false or misleading disclosure will not receive protections under the PID Act.

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.

2H: Support for person against whom the disclosure has been made

Support will be provided for the person against whom a disclosure has been made in accordance with [Step 9 of Item 3c, Procedures for Authorised Officers](#). The identity of the person will be kept confidential as far as is reasonably practicable while the PID process is being undertaken (see [Item 5A, Section 5, Confidentiality, Record Keeping and Monitoring and Evaluation](#)).

2I: Keeping the person who made the disclosure informed

The person who made the disclosure will be kept informed throughout the process. They will be advised:

- when the disclosure is either allocated for investigation, or not allocated because it has been determined not to be an public interest disclosure
- of information about the principal officer's discretionary powers to not investigate within 14 days of the disclosure being allocated
- if the investigation is to be conducted under the PID Act
- the estimated length of the investigation
- if the agency decides not to investigate, the reasons for the decision and any action that might be available to the discloser under other Commonwealth laws
- if an extension of time for the investigation is granted by the Ombudsman and the progress of the investigation
- when the investigation report has been completed.

During the investigation, the discloser will be given:

- information about the ongoing nature of the investigation
- information about the progress of the investigation and reasons for any delay
- advice if their identity needs to be disclosed for the purpose of investigating the matter and an opportunity to discuss any concerns.

2J: How long does the process take?

In accordance with the PID Act, the ATSB will conduct an investigation and complete a report within 90 days of the date the matter was allocated for investigation. The Ombudsman may grant one or more extensions of time and will inform the discloser and provide reasons for the extension. The ATSB will also advise the discloser about the progress of the investigation.

A copy of the investigation report will be provided to the person who made the disclosure. The report will set out the matters considered, the duration of the investigation, any findings that were made, any action either recommended or taken, any claims or evidence of detrimental action to the reporter, and the agency's response to those claims.

In some cases, where appropriate and necessary, material may be deleted from the copy provided to the discloser.

2K: What happens at the end of an investigation?

At the end of an investigation the CEO will take appropriate action in response to recommendations and other matters contained in the investigation report. Actions might include:

- commencing Code of Conduct proceedings under the *Public Service Act 1999* 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
 - an internal audit or other review of an issue or the operations of a particular unit
 - implementing or changing policies, procedures or practices
 - conducting training and awareness sessions for staff.
-

2L: Dissatisfied with the ATSB's action

A person who makes a disclosure and is not satisfied with the ATSB's decision not to investigate a matter can raise the issue with the authorised officer for further explanation. Similarly, a person who believes on reasonable grounds that an investigation was inadequate or the ATSB's response to the investigation was inadequate, can talk to an authorised officer about their options.

If after consulting with the ATSB, the reporter is still dissatisfied with the explanation and believes that the ATSB has not acted appropriately, the Ombudsman may consider the matter on receipt of a complaint about the agency.

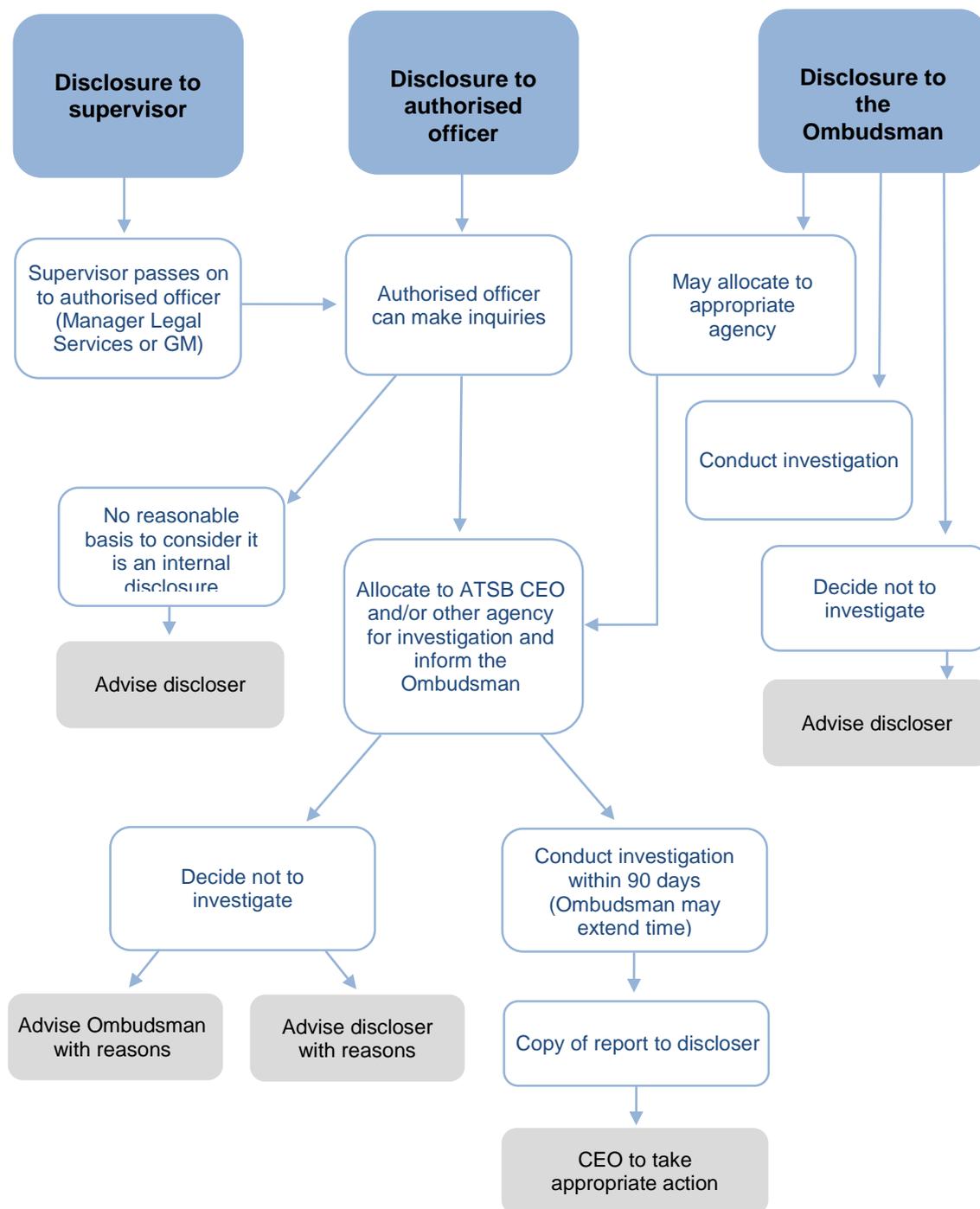
The Ombudsman may investigate the complaint or may refer it back to the agency for further action. More information is available on the Ombudsman's website at www.pid.ombudsman.gov.au

SECTION 3: Dealing with a public interest disclosure

3A: Handling process

The ATSB's process for handling a public interest disclosure reflects the PID Act, rules and standards. The steps involved are illustrated in Figure B and further information is provided in this section.

Figure B: ATSB's process for handling a public interest disclosure



Source: Adapted from the Commonwealth Ombudsman's Agency Guide to the Public Interest Disclosure Act 2013.

SECTION 3: Dealing with a public interest disclosure, continued

Where a public official discloses information to their supervisor or manager that the supervisor or manager has reasonable grounds to believe constitutes disclosable conduct, the supervisor or manager must, as soon as practicable, give the information to an Authorised Officer.

Supervisors or managers should make their assessment of whether the information concerns disclosable conduct by exercising common sense. Supervisors or managers should have regard to the definition of disclosable conduct in [section 29 of the PID Act](#).

Before referring a disclosure to an Authorised Officer, the supervisor or manager must:

**3B:
Procedures
for
Supervisors
and Managers**

- take a written record of the facts of the disclosure, including the time and date of the disclosure;
- if the person wishes to remain anonymous, do a written assessment of any risks that reprisal action might be taken against the discloser (see the risk assessment template at the PID page on [The Hub](#) and also [Steps 7 and 8 of Item 3C Procedures for Authorised Officers](#));
- seek consent from the discloser to include the discloser’s name and contact details in the written record;
- seek the discloser’s consent to passing on the disclosure by email; and
- ask the discloser to sign the record of disclosure, where this is practicable.

At the time a supervisor or manager gives information to an Authorised Officer, the supervisor or manager must also:

- give the Authorised Officer all records in relation to the disclosure,
- if the person wishes to remain anonymous, give the Authorised Officer their written assessment of the risk of reprisal, and
- inform the discloser that they have given the information to an Authorised Officer and advise the discloser of the name and contact details of that Authorised Officer,

Where a supervisor or manager receives an anonymous disclosure, the supervisor or manager must refer it to an Authorised Officer as soon as is reasonably practicable.

Supervisors and managers must treat disclosures with the highest degree of confidentiality. For further information please refer to (see [Item 5A, Section 5, Confidentiality, Record Keeping and Monitoring and Evaluation](#)).

Step 1: Consider whether a disclosure meets the requirements for a public interest disclosure

**3C:
Procedures
for
Authorised
Officers**

When an Authorised Officer receives a disclosure of information, the Authorised Officer will consider the information disclosed and determine whether there are reasonable grounds on which the disclosure could be considered to be an internal disclosure made in accordance with the PID Act.

The Authorised Officer should consider whether:

- the disclosure was made by a person who is, or was, a public official;
- the disclosure was made to an authorised internal recipient or supervisor;
- the disclosure is about disclosable conduct;

-
- the person who is alleged to have carried out the disclosable conduct was a public official at the time they are alleged to have carried out that conduct; and
 - the disclosure is otherwise a public interest disclosure within the meaning of the PID Act.

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. If the Authorised Officer is satisfied the disclosure could be an internal disclosure, the Authorised Officer will follow the process outlined in the following rest of the steps outlined in this [Item 3C](#).

If the Authorised Officer is **not** satisfied the disclosure could be an internal disclosure, the disclosure will not be allocated for investigation and:

- if contacting the discloser is reasonably practicable, the Authorised Officer must advise the discloser in writing that the disclosure is not to be allocated, by advising them of:
 - the reasons why the disclosure will not be allocated to an agency; and
 - any other course of action that might be available to the discloser under other laws of the Commonwealth;
- if the disclosure relates to conduct that may need to be addressed under the ATSB's:
 - Fraud Control Plan on the Fraud and Risk page on [The Hub](#);
 - Dealing with breaches of the Code of Conduct Employment Procedure Final on [The Hub](#);
 - Workplace Bullying and Harassment Employment Procedure on [The Hub](#);
 - Work Health and Safety Policy and Procedures on [The Hub](#);
 - any other relevant ATSB policy or procedures;

the Authorised Officer may refer the matter to be dealt with in accordance with the relevant policy or procedure.

Step 2: Consider whether the discloser understands the PID Act

When an Authorised Officer receives a disclosure of information and the Authorised Officer is aware of the discloser's contact details, the Authorised Officer should firstly consider the discloser may be unaware of the provisions of the PID Act.

If 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 considered an internal disclosure, the Authorised Officer must:

- inform the discloser that the disclosure could be treated as an internal disclosure under the PID Act;
- explain to the discloser what the PID Act requires for a disclosure to be an internal disclosure;
- explain to the discloser the protections provided by the PID Act to persons who make disclosures under the Act;
- advise the discloser of any orders or directions that may affect disclosure of information; and
- advise the discloser that they should seek their own independent legal advice on the impact of the PID Act and their rights and responsibilities.

Step 3: Ask the discloser for consent to investigate

Where the Authorised Officer is aware of the contact details of the discloser, the Authorised Officer must, as soon as practicable after receiving the disclosure and before allocating the disclosure, ask the discloser whether he or she:

- a) consents to the Authorised Officer giving the discloser's name and contact detail to the CEO and his delegates under the PID Act; and
- b) wishes the disclosure to be investigated.

The Authorised Officer must make a written record of the discloser's responses (if any) to these questions. Where a discloser does not respond within 7 days to the questions referred to above:

- in paragraph (a) – the discloser is taken not to have consented to the disclosure of their name and contact details; and
- in paragraph (b) – the discloser is taken to wish the disclosure to be investigated.

Step 4: Allocate the disclosure

The Authorised Officer will use his or her best endeavours to decide the allocation within 14 day after the disclosure is made.

In deciding the agency or agencies to which a disclosure will be allocated, the Authorised Officer will have regard to:

- the principle that the department should only deal with disclosures that relate to the department (and not to other departments or agencies); and
- such other matters (if any) as the Authorised Officer considers relevant.

In addition, if the Authorised Officer is contemplating allocating the disclosure to the Ombudsman, the Inspector General of Intelligence and Security (IGIS) or an investigative agency, the Authorised Officer must have regard to additional matters set out in the PID Act (see subsection 43(3)(a)(ii)-(iv) of the [PID Act](#)).

The Authorised Officer must not allocate a disclosure to another agency unless an Authorised Officer of that other agency has consented to the allocation.

Step 5: Inform relevant persons of the allocation

Where the Authorised Officer allocates the handling of a disclosure within the ATSB, the Authorised Officer must:

- inform the CEO and his delegates, as appropriate;
- once allocation is complete, inform the relevant contact officer in the Ombudsman's Office; and
- where the Authorised Officer is aware of the contact details of the discloser, inform the discloser of the allocation.

If the Authorised Officer allocates a disclosure to:

- an intelligence agency, the Authorised Officer will inform the IGIS of this in writing; or
- another agency, the Authorised Officer will inform the Ombudsman of this in writing.

Step 6: Make a record of the allocation decision

When an Authorised Officer allocates the handling of a disclosure to one or more agencies, the Authorised Officer must keep an appropriate record of:

- the decision (including the name of each agency to which the disclosure is to be allocated);
- the reasons for the decision; and
- the consent provided by the Authorised Officer of the agency to which the allocation is made.

In addition, the Authorised Officer must keep appropriate records of whether the discloser was informed of the allocation decision and, if so, of:

- the day and time the discloser was notified;
- the means by which the discloser was notified; and
- the content of the notification.

These records should be kept confidential.

Step 7: Conduct a risk assessment

Where an Authorised Officer 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. The risk assessment tool available on [The Hub](#) to conduct their assessment based on:

- **Identifying** – are reprisals or related workplace conflict problems in the workplace, or do they have the potential to be problems?
- **Assessing** – what is the likelihood and consequence of reprisals or related workplace conflict?
- **Controlling** – what strategies should be put in place to prevent or contain reprisals or related workplace conflict?
- **Monitoring and reviewing** – have the strategies been implemented and were they effective?

Step 8: If necessary, develop a risk mitigation strategy

Where the risk level associated with reprisal is assessed as anything greater than low, the department will develop a strategy to mitigate the risk of reprisals being taken against the discloser. This strategy may include some or all of the support measures set out in Step 9.

Step 9: Provide support for the discloser and the person against whom a disclosure has been made

Support for disclosers

Regardless of the outcome of the risk assessment, the ATSB will take all reasonable steps to protect public officials who have made a public interest disclosure from detriment or threats of detriment relating to the disclosure.

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;
- where there are any concerns about the health and wellbeing of the discloser, liaising with officers responsible for work health and safety in the ATSB;
- referring the discloser to the Employee Assistance Program; or
- transferring the discloser to a different area within the workplace or approving remote/teleworking (with the consent of the discloser). This is only likely to be appropriate in cases involving very major or extreme risk.

Support for person against whom disclosure has been made

The ATSB will also take steps to support any employee who is the subject of a PID.

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

- advising the employee of his or her rights and obligations under the PID Act and about the ATSB's investigation procedures, including the employee's rights to procedural fairness;
- informing the employee of the progress of the investigation;
- ensuring that the identity of the employee is kept confidential as far as reasonably practicable; or
- where there are any concerns about the health and wellbeing of the employee, liaising with officers responsible for work health and safety in the ATSB;
- referring the employee to the Employment Assistance Program;
- transferring the employee to a different area within the workplace or approving remote/teleworking (with the consent of the employee). This is only likely to be appropriate in cases involving very major or extreme risk; or
- advising the employee that they should seek their own independent legal advice on the impact of the PID Act and their rights and responsibilities.

SECTION 4: INVESTIGATIONS

The CEO has delegated the investigative functions under the PID Act to the ATSB's SES officers. If an Authorised Officer allocates a matter for investigation, the Investigators must follow a number of steps under the PID Act.

Step 1: Provide initial information to disclosers

As soon as is reasonably practicable of the department being allocated a PID, the Investigators will provide the discloser with the following information about his or her powers to:

- decide not to investigate the disclosure;
- decide not to investigate the disclosure further;
- decide to investigate the disclosure under a separate investigative power.

Step 2: Consider whether to investigate the disclosure

The Investigators must, as soon as practicable after receiving an allocation of a disclosure from an Authorised Officer (whether from within or outside the department) consider whether to exercise the discretion under section 48 of the PID Act not to investigate the disclosure under the PID Act.

The Investigators may decide not to investigate (or may decide to discontinue an investigation already begun) if:

- the discloser is not a current or former public official (and a determination has not been made under section 70 of the [PID Act](#));
- the information does not to any extent concern serious disclosable conduct;
- the disclosure is frivolous or vexatious;
- the disclosure is substantially the same as a disclosure that has been investigated under the PID Act;
- 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 relevant delegate under the PID Act is reasonably satisfied that there are no matters that warrant further investigation;
- the discloser has informed a delegate under the PID Act that they do not wish the disclosure to be pursued and a delegate is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation; or
- it is impracticable to investigate the disclosure because:
 - the discloser has not revealed their name and contact details;
 - the discloser has refused or has failed or is unable to give the Investigators the information they requested; or
 - of the age of the information.

4A: Procedures for Investigators

Guidance on the 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 at www.ombudsman.gov.au.

Step 3: Notify the discloser and Ombudsman

If the Investigator decides not to investigate a disclosure, they will:

- inform the Ombudsman in writing of that decision and the reasons for that decision; and
- where they have been given the name and contact details of the discloser, 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.

If the Investigators decide to investigate the disclosure, they will inform the discloser as soon as reasonably practicable:

- that they are required to investigate the disclosure; and
- of the estimated length of the investigation.

If the Investigators decide to investigate the disclosure, start to investigate the disclosure but then decide not to investigate the disclosure further, they must inform:

- 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; and
- the Ombudsman of that decision and the reasons.

Step 4: Investigate the matter

If the Investigator decides to investigate, they will investigate whether there are one or more instances of disclosable conduct.

General principles

The following general principles will apply to the conduct of investigations:

- maintaining the confidentiality of the identity of the discloser will be paramount when conducting the investigation (see [Item 5A, Section 5C, Confidentiality, Recording Keeping and Monitoring and Evaluation](#));
- the investigation will be conducted in accordance with the principles of procedural fairness;
- the investigation will be conducted in accordance with the [Australian Government Investigation Standards 2011](#) (AGIS);
- 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.

Aside from compliance with these principles, the Investigators are free to conduct the investigation as they see fit. The way in which the investigation is conducted may vary depending on the alleged conduct which is being investigated. In particular, where the Investigator\ consider that the nature of the disclosure is such that the outcome of the investigation is likely to be referral of the matter for investigation under another process or procedure, the investigation will be conducted in accordance with those other established processes or procedures.

Additional procedures required in particular circumstances

In conducting an investigation under these procedures, the Investigators must also comply with:

- the [Public Interest Disclosure Standard 2013](#) or any other standard issued under section 74 of the PID Act; and
- to the extent they are relevant to the investigation:
 - the Commonwealth Fraud Control Guidelines;
 - these procedures;
 - the procedures established under s 15(3) of the *Public Service Act 1999*; and
 - any other of the ATSB's relevant policies or procedures.

Obtaining information

Instances of disclosable conduct may relate to information that is disclosed or information obtained in the course of the investigation rather than information provided in the initial disclosure.

During the investigation, the CEO or his delegates may, for the purposes of the investigation, obtain information from such persons and make such inquiries as they see fit.

When being interviewed as part of an investigation, an interviewee will be informed of the following:

- the identity and function of each individual conducting the interview;
- the process of conducting an investigation;
- the authority of the CEO (and relevant delegates) under the PID Act to conduct the investigation;
- the protections provided to witnesses under section 57 of the PID Act; and
- the person's duty:
 - if they are a public official – to use their best endeavours to assist the Investigators 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);
 - 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.

The Investigators will ensure:

- 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 the interview.

In conducting the investigation, the Investigators may adopt findings set out in reports of investigations or inquiries under other Commonwealth laws or executive powers, or other investigations under the PID Act.

Referral of information to police

If, during the course of the investigation, the Investigator suspect on reasonable grounds that some of the information disclosed or obtained in the course of the investigation is evidence of the commission of an offence against a law, the Investigators may disclose the information to a member of an Australian police force. If the information relates to an offence that is

punishable for a period of at least two years, the CEO or his delegates must disclose the information to a member of an Australian police force.

The investigation may also include consideration of whether a different or further investigation should be conducted by the agency or another body under another law of the Commonwealth.

Procedural fairness

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.

Procedural fairness does require that the person, against whom allegations are made, is entitled to know the substance of allegations against them if an adverse finding is going to be made about their conduct.

Procedural fairness does not equate to a right to know the identity of the discloser who has alleged that the person has committed wrongdoing.

However, the person may be able to guess the discloser's identity because the substance of the allegations makes it evident.

Where the Investigator, in preparing the report of their investigation, propose to:

- make a finding of fact; or
- 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 Investigators 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: The above paragraph 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.

The Investigators must ensure that a finding of fact in a report of an investigation complies with the evidentiary requirements in the [Public Interest Disclosure Standards](#) (or any other standard issued under the PID Act).

Step 5: Prepare investigation report

Once the Investigators have completed the investigation, they will prepare a report of the investigation.

The Investigators must complete the investigation report within 90 days after the disclosure was allocated to the ATSB (either by an Authorised Officer within the ATSB or from a different department), unless this period is extended by the Ombudsman. If the period is extended, the Investigators will inform the discloser of the progress of the investigation.

Requests for an extension of time should be submitted to the Ombudsman 21 days prior to the expiry of the investigation completion date using the [Request extension of time form](#) on the Ombudsman's website at www.ombudsman.gov.au.

Content of the report

The report must set out:

- the matters considered in the course of the investigation;
- the duration of the investigation;
- the Investigators' findings (if any); and
- the action (if any) that has been, is being, or is recommended to be taken.

Where relevant, a report must:

- identify whether there have been one or more instances of disclosable conduct;
- identify any regulations rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates;
- explain the steps taken to gather evidence;
- set out a summary of the evidence; and
- set out any recommendations made based on that evidence.

Where the Investigators have completed a report of an investigation under the PID Act, and where they have been given the discloser's contact details, the Investigators must, as soon as practicable, advise the discloser in writing:

- that the report has been completed; and
- whether the report was completed within the time limit provided for by the PID Act.

If the Investigators consider that information disclosed in the course of a public interest disclosure may be appropriately dealt with under another procedure or policy of the department, they may recommend in the investigation report that this occur.

Step 6: Provide report to discloser

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. However, the Investigator may delete from the copy of the report given to the discloser any material:

- that is likely to enable the identification of the discloser to 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
 - having, or requiring, a national security or other protective security classification; or
 - containing intelligence information.

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.

SECTION 5: Confidentiality, Record Keeping & Monitoring and Evaluation

5A: Ensuring confidentiality

The ATSB realises many people will want their report to remain confidential and is committed to keeping the reporter’s identity confidential as far as practicable. However there may be situations where this is not possible or appropriate. The authorised officer will discuss with the reporter whether it is possible to keep their identity confidential.

If confidentiality cannot be maintained, a plan will be developed to support and protect the discloser from risks of reprisal.

It is important that a person who reports wrongdoing only discusses their report with those responsible to deal with it. This includes the authorised officer and/or the CEO.

Disclosures should be assessed and investigated discreetly, with a strong emphasis on maintaining confidentiality of both the discloser and any person who is the subject of the disclosure. It is an offence for a person who has information obtained in the course of conducting a disclosure investigation, or in connection with their powers and functions under the PID Act, to disclose or use this information.

Any email correspondence between supervisors or managers, Authorised Officers and the CEO or his delegates should include in the subject line **For Addressee Eyes Only – Public Interest Disclosure**. This alerts any support staff who may have access to emails that this email is not to be opened.

Any interviews conducted by an Authorised Officer or delegate (including Investigators) should be conducted in private.

Any interviews with the discloser should be arranged so as to avoid the identification of the discloser by other staff of the agency.

Supervisors, managers and Authorised Officers who seek further advice from the Legal Services Unit regarding a disclosure must de-identify the information. When referring to involved parties they should be referred to as the ‘discloser’ and the ‘subject person’.

5B: Record keeping

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 Department 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*).

Where a form is required to be sent under these procedures, a copy of the form must be kept.

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.

Any email messages sent by supervisors or managers, Authorised Officers or Delegates that contain identifying information must be clearly marked **For Addressee Eyes Only – Public Interest Disclosure**.

When a person ceases their role as an Authorised Officer in the ATSB (including because of resignation or movement to another agency), they must transfer all their PID records to another Authorised Officer in the Department.

Each Authorised Officer must provide a six monthly report to Manager, Legal Services 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.

The Manager Legal Services will collate the department's report to the Ombudsman on disclosures made during the financial year.

**5C:
Monitoring
and
Evaluation**

The Investigators must advise Manager Legal Services of every decision made by the Investigators to investigate a disclosure during the financial year.

Each delegate of the CEO who takes action in response to a recommendation made in an investigation report must make a report of this action to Manager Legal Services.

Manager Legal Services must prepare the agency's report for the CEO's consideration within the time specified by the CEO.

The Manager Legal Services will send the Agency's report to the Ombudsman within the time requested by the Ombudsman or as otherwise agreed with the Ombudsman.

SECTION 6: References and further information

- References**
- *Public Interest Disclosure Act 2013*
 - Public Interest Disclosure Standard 2013
 - Commonwealth Ombudsman – Agency Guide to the Public Interest Disclosure Act 2013
 - Commonwealth Ombudsman information sheets:
 - The Public Interest Disclosure Act 2013 – what’s it all about?
 - How to make a public interest disclosure
 - Responsibilities of principal officers of Commonwealth agencies
 - The role of authorised officers
 - Commonwealth Ombudsman forms:
 - Notification of allocation
 - Notification of decision not to investigate
 - Request for extension of time
 - Commonwealth Ombudsman website
www.ombudsman.gov.au/pages/pid/
 - Australian Public Service Commission Circular 2013/08: APS whistleblowing scheme and public interest disclosures
 - *Public Service Act 1999* (as amended)
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Further information Employees requiring assistance with these procedures are encouraged to contact the Manager, Legal Services or the Team Manager, Organisational Development.

Author Manager, Legal Services Date: AUGUST 2015

Authorised by CEO Date: AUGUST 2015
