Making a disclosure under the Public Interest Disclosure Act 2013
HR POLICY AND PROCEDURES

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

I, Julian Walsh, acting 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 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 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

Julian Walsh
A/g Chief Executive Officer

January 2014
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Introduction

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.

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.

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.

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.

Continued on next page
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* (as amended).

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.

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.

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.

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?

Disclosure by a current or former public official

- Includes public servants and parliamentary service employees, service providers under a Commonwealth contract, statutory office holders, staff of Commonwealth companies etc

Of information that tends to show, or that the public official reasonably believes tends to show disclosable conduct

- Conduct engaged in by an agency, public official or contracted service provider.
  - Types include illegal conduct, corruption, maladministration, abuse of public trust, deception relating to scientific research, wastage of public money, unreasonable danger to health or safety, and danger to the environment

Made to an appropriate person within government

- A supervisor or authorised officer
- The Commonwealth Ombudsman
- The IGIS (if an intelligence matter)
- A prescribed investigative agency

OR

Made to anybody (other than a foreign official) under limited circumstances

- If the disclosure does not include intelligence or sensitive law enforcement information
  - AND
  - an investigation was conducted and the public official reasonably believes the investigation or the agency response was inadequate or the investigation was not completed within time
  - and the disclosure is not contrary to the public interest
  - OR
  - the public official believes on reasonable grounds that there is a substantial and imminent danger to health, safety or the environment

Making a public interest disclosure

What can be reported?

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.

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.

What is not disclosable conduct?

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.

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.

Continued on next page
### How to make a public interest disclosure

A public interest disclosure can be made to the ATSB in person, by telephone or in writing, including by email.

Written reports are encouraged as this can help to avoid any confusion or misinterpretation.

If a report is made verbally, the person receiving the report must make a comprehensive record of the disclosure and ask the person making the disclosure to sign this record.

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

### What information should be provided?

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:

- 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.

### Who can a public interest disclosure be made to?

Suspected wrongdoing can be reported to an authorised person in the ATSB, including the CEO, the Governance Manager and any position within the ATSB classified as a General Manager.

Any other manager who receives a whistleblowing report must refer it to the CEO or an authorised person.

Contact details for the persons within the ATSB’s authorised to receive a public interest disclosure are available on the ATSB [website](#) and [intranet](#).

In exceptional circumstances an emergency disclosure may also be made outside government if a person reasonably believes there is a substantial and imminent danger to health, safety or the environment.
Making a public interest disclosure, continued

How is a person who makes a disclosure protected?

The identity of a person who makes a disclosure will be kept confidential as far as practicable. It is an offence to provide identifying 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.

Maintaining 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.

Can a public interest disclosure be anonymous?

Anonymous disclosures will be acted on whenever possible however, in some cases it may be difficult to investigate a disclosure if the ATSB cannot contact the reporter to seek further information.

The ATSB will also not be able to notify a person who has made an anonymous disclosure about the investigation and any outcomes.

The ATSB encourages officials who make a disclosure to identify themselves to the CEO or an authorised officer. Every effort will be made to keep their identity confidential as far as practicable.

Continued on next page
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.

What support is available to the person who makes the disclosure

The ATSB will support a public official who makes a personal interest disclosure and will take all reasonable steps necessary to protect them. In addition to support from a supervisor, manager or authorised officer, the person who makes a disclosure may also find the Employee Assistance Program helpful.

The discloser should raise any concerns with the authorised officer.

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.

What happens at the end of an 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 there 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.

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

Continued on next page
Making a public interest disclosure, continued

**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](http://www.pid.ombudsman.gov.au)
Dealing with a public interest disclosure

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.

Continued on next page
Receiving a disclosure in the ATSB

A public interest disclosure can be made to the ATSB in person, by telephone or in writing, including by email. Reports may be submitted directly from the discloser or via a supervisor or manager.

If a person has disclosed information to their manager the information must be passed to an authorised officer as soon as practical. Because of confidentiality requirements, the supervisor or manager should get the person’s consent before passing on their identifying information.

The ATSB encourages written reports as this can help to avoid any confusion or misinterpretation.

If a report is made verbally, the person receiving the report must make a comprehensive record of the disclosure and ask the person making the disclosure sign this record. A Record of initial discussion template is available on the ATSB intranet.

Determining if the matter is a public interest disclosure

An authorised officer will examine the information that has been supplied and decide whether it is a disclosure under the PID Act.

The ATSB will investigate all public interest disclosures unless the CEO believes there are reasons to decline or discontinue the investigation.

Risk assessment

Once a matter is determined to be a public interest disclosure, the ATSB will assess the risk of reprisals which may be taken against the person who made the disclosure. The risk assessment involves assessing specific behaviour and circumstances that may result in reprisals, and then putting in place strategies to prevent or contain them.

The authorised officer will use the risk assessment tool available on the ATSB’s intranet 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?

Preliminary inquiries

The authorised officer may make inquiries and obtain further information before making a decision about allocating the matter for investigation. In some cases, more details may be needed before the authorised officer can make an informed decision and the discloser may be asked to provide additional information.

Continued on next page
Dealing with a public interest disclosure, continued

Allocating a disclosure
Following preliminary assessment, the ATSB’s authorised officer must allocate the handling and investigation of the disclosure to the ATSB.

If the disclosure involves another Commonwealth agency the matter will be allocated to that agency following discussion with the discloser and/or the agency.

In allocating the matter to an agency external to the ATSB, the authorised officer will follow the guidance set out in the Agency Guide to the Public Interest Disclosure Act 2013 issued by the Commonwealth Ombudsman.

Deciding not to investigate
The CEO may decide not to investigate or discontinue an investigation if:

- the discloser is not a current or former public official
- the information does not to any extent concern serious disclosable conduct
- the disclosure is frivolous or vexatious
- the disclosure is the same or substantially the same as another disclosure which has been or is being investigated under the PID Act
- the disclosure is the same or substantially the same as a disclosure already investigated or currently being investigated under another Commonwealth law
- the discloser has advised that they do not wish the investigation to be pursued, and the CEO is reasonably satisfied that there are no matters that warrant further investigation
- it is impracticable to investigate the disclosure because:
  - of the age of the information
  - the discloser has not revealed their name and contact details, or
  - the discloser has failed, or is unable, to give the investigator the information or assistance they requested.

Notice of a decision not to investigate or discontinue an investigation will be provided given to the discloser. If the discloser is not satisfied with the decision they may decide to refer the report to the Ombudsman for review.

Conducting an investigation
The CEO will determine the appropriate investigation process depending on the nature of the matter. The CEO may delegate those powers and functions to a suitable person having regard to the circumstances of the disclosure. In some circumstances, the person authorised to undertake the investigation may be external to the ATSB.

Time limit for investigations
The ATSB will conduct an investigation and complete a report within 90 days of the date the matter was allocated for investigation. While a straightforward matter may be completed quickly, more complex issues, where significant evidence needs to be gathered, may take much longer.

The Ombudsman may grant one or more extensions of time and will inform the discloser and provide reasons for granting the extension. The ATSB will also advise the discloser about the progress of the investigation.

Continued on next page
Dealing with a public interest disclosure, continued

**When must the person under investigation be informed**

There is no obligation to immediately inform any person under investigation that a public disclosure investigation has commenced and, depending on the circumstances, the ATSB may choose not to inform them during the course of the investigation.

However, the person about whom a disclosure has been made and any other people involved in the matter will have the opportunity to make a statement in relation to the report (orally and/or in writing) before any findings or recommendations are made.

**Disclosures not substantiated**

There may be a number of reasons why a public interest disclosure is not substantiated, including insufficient evidence. Where a disclosure is found to be unsubstantiated the authorised officer will provide the discloser with as much information as possible within confidentiality limitations.

**Ensuring confidentiality**

The ATSB's assessment and any subsequent investigation of a disclosure will be conducted discreetly and with a strong emphasis on maintaining confidentiality of all parties involved in the matter.

It is an offence for a person who has obtained information in the course of conducting a disclosure investigation or in connection with their powers and functions under the PID Act to disclose or use the information.

All involved parties will be advised of their confidentiality obligations and all material relating to the disclosure will be stored securely and will only be accessible to those who require it and have the appropriate authority.

**Record keeping**

The ATSB will retain and securely store all material relating to a public interest disclosure. Material may include details about the initial disclosure, discussion records, risk assessment, allocation information, investigation records and notifications to the discloser and other involved parties.

As required under the PID Act, the ATSB is also required to provide certain information to the Ombudsman to meet annual reporting obligations.

**Investigation report**

An investigation report will be prepared at the conclusion of a disclosure investigation. The report will include:

- matters considered during the course of the investigation
- duration of the investigation
- any findings that were made
- any action either recommended or taken
- any claims or evidence of detrimental action to the discloser, and the agency’s response to those claims.

A copy of the report will be provided to the discloser. It will be redacted if it is likely to enable the identification of any person involved in the investigation.

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Dealing with a public interest disclosure, continued

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<td>At the end of an investigation the ATSB will take appropriate action in response to recommendations and other matters raised in the report. Actions might include:</td>
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<tr>
<td>1. commencing Code of Conduct proceedings under the <em>Public Service Act 1999</em> (as amended) or another disciplinary process</td>
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<td>2. referral of the matter to the police or another body that can take further action</td>
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<td>3. mediation or conciliation of a workplace conflict</td>
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<td>4. an internal audit or other review of an issue or the operations of a particular unit</td>
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<td>5. implementing or changing policies, procedures or practices</td>
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<td>6. conducting training and awareness sessions for staff.</td>
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<td>The discloser will be advise of the outcome of the investigation. In providing additional details, the CEO or authorised person must take public interest and protection of employees’ privacy into account.</td>
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<td>Disclosers may choose to lodge a complaint with the Commonwealth Ombudsman about decisions or actions of the ATSB. These procedures do not in any way affect the rights of employees to contact the Commonwealth Ombudsman.</td>
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<td>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 <a href="http://www.pid.ombudsman.gov.au">www.pid.ombudsman.gov.au</a></td>
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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
- Australian Public Service Commission Circular 2013/08: APS whistleblowing scheme and public interest disclosures
- *Public Service Act 1999* (as amended)

Further information

Employees requiring assistance with these procedures are encouraged to contact the Governance Manager or the Team Manager, Organisational Development.

Author

Governance Manager Date: 22 January 2014

Authorised by

CEO Date: 24 January 2014