

# Australian Transport Safety Bureau

## Public Interest Disclosure Procedures



## **Declaration pursuant to s 59 of the *Public Interest Disclosure Act 2013 (Cth)***

The Australian Transport Safety Bureau (ATSB) is committed to the highest standards of ethical and accountable conduct. The ATSB encourages and supports the reporting of wrongdoing by public officials under the PID Act.

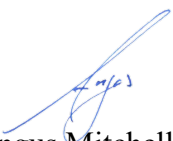
The ATSB will act on disclosures as appropriate and protect disclosers from any reprisals or threats of reprisals resulting from the making of a disclosure.

Under subsection 59(3) of the *Public Interest Disclosure Act 2013 (Cth)* (**PID Act**), the principal officer of an agency must, by instrument in writing, establish procedures for facilitating and dealing with public interest disclosures relating to the agency.

I encourage ATSB staff to familiarise themselves with these revised procedures for making a public interest disclosure relating to the ATSB and to come forward if they suspect any form of wrongdoing.

I, Angus Mitchell, Chief Executive Officer (CEO) of the ATSB, hereby:

- REVOKE all previous procedures of the ATSB under the PID Act; and
- ESTABLISH these procedures to take effect upon execution.



Angus Mitchell

Chief Executive Officer

Australian Transport Safety Bureau

14 November 2024

# Table of Contents

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<b>1. Introduction</b>	<b>5</b>
1.1. Overview	5
1.2. Organisational commitment	5
1.3. Defined terms	5
<b>2. About Public Interest Disclosures</b>	<b>7</b>
2.1. The PID legislative framework	7
2.2. What is a public interest disclosure?	7
2.3. The ATSB’s authorised officers	8
2.4. Public officials	8
<b>3. Making a Public Interest Disclosure</b>	<b>9</b>
3.1. What is disclosable conduct?	9
3.2. Exception for ‘personal work-related conduct’	10
3.3. How to make a public interest disclosure (PID)	11
3.4. Forms of disclosure	11
3.5. Sending or making the disclosure	12
3.6. Advice for disclosers in making a disclosure	12
3.7. Anonymous disclosures	13
<b>4. Procedures for supervisors</b>	<b>14</b>
4.1. Application	14
4.2. Responsibilities of supervisors	14
<b>5. Procedures for authorised officers</b>	<b>15</b>
5.1. Role of authorised officers	15
5.2. Responsibilities of authorised officers	15
5.3. Providing initial information to discloser	16
5.4. Considering whether or not a disclosure should be allocated	16
5.5. Where the authorised officer decides to not allocate the disclosure	17
5.6. Stop action directions under the NACC Act	18
5.7. Where the authorised officer decides to allocate the disclosure	18
<b>6. Procedures for principal officers</b>	<b>20</b>
6.1. Role of principal officers	20
6.2. Responsibilities of principal officers	20
6.3. Notifying the discloser	21
6.4. Considering whether an investigation is required	21
6.5. If the principal officer decides not to investigate or investigate further	22
6.6. If the disclosure cannot be investigated because of a stop action direction	23
6.7. If the principal officer decides to investigate the disclosure	23
<b>7. Assessing the risk of reprisals</b>	<b>24</b>
7.1. Reprisals	24
7.2. Conducting a risk assessment	24
7.3. Development of a risk mitigation strategy	25
7.4. Risk assessments for anonymous disclosers	25
<b>8. Investigations</b>	<b>26</b>
8.1. Conducting an investigation	26
8.2. General principles	26
8.3. Notification of investigation	28

8.4.	Suspicion of criminal offences and/or fraud.....	28
8.5.	The PID investigation report.....	28
8.6.	Providing the report to the discloser and the Ombudsman .....	30
<b>9.</b>	<b>The National Anti-Corruption Commission (NACC) .....</b>	<b>30</b>
9.1.	Interaction between PIDs and the NACC .....	30
9.2.	Mandatory referral to the NACC .....	31
9.3.	Stop action directions under the NACC Act.....	32
9.4.	Informing the NACC .....	33
9.5.	Exceptions to the NACC notification requirements .....	33
9.6.	Notifying the discloser.....	34
<b>10.</b>	<b>Other disclosures.....</b>	<b>34</b>
10.1.	Overview.....	34
10.2.	External disclosures .....	34
10.3.	Emergency disclosures.....	35
10.4.	Legal practitioner disclosures .....	35
<b>11.</b>	<b>Support for public officials in the PID process .....</b>	<b>35</b>
11.2.	Protection for disclosers.....	36
11.3.	Protection for witnesses in a PID investigation .....	37
11.4.	Protection for officials exercising powers or performing functions under the PID Act .....	37
11.5.	Protection from detriment and reprisal .....	37
11.6.	Supporting and protecting disclosers and witnesses.....	39
<b>12.</b>	<b>Employees who are the subject of a PID.....</b>	<b>40</b>
12.1.	Rights and obligations of employees who are the subject of a PID.....	40
12.2.	Supporting an employee who is the subject of a PID .....	40
<b>13.</b>	<b>Confidentiality and authorised information sharing.....</b>	<b>41</b>
13.1.	Confidentiality .....	41
13.2.	Practical steps to protect confidentiality .....	41
13.3.	Authorised information sharing between agencies .....	42
13.4.	Records management.....	42
<b>14.</b>	<b>Reports to the Ombudsman .....</b>	<b>43</b>
<b>15.</b>	<b>Review .....</b>	<b>44</b>

## 1. Introduction

### 1.1. Overview

- 1.1.1. This document sets out the Australian Transport Safety Bureau (ATSB)'s procedures for facilitating and dealing with public interest disclosures (PIDs) for the purpose of section 59(3) of the *Public Interest Disclosure Act 2013 (Cth)* (PID Act) (hereafter referred to as **these Procedures**).
- 1.1.2. These Procedures apply to disclosures made on or after the date the procedures were determined to make effect by the CEO in the covering note. Contact the Legal Services for advice on processing or investigating any disclosure that was made before these procedures were Established.
- 1.1.3. As a non-corporate Commonwealth entity,<sup>1</sup> the ATSB falls within the section 71(1)(a) definition of an 'agency' under the PID Act.
- 1.1.4. The ATSB is committed to the highest standards of ethical and accountable conduct. The ATSB encourages and supports the reporting of wrongdoing by public officials in accordance with the PID Act and will take active steps to support and protect persons who make disclosures under the PID Act from any reprisals or threats of reprisals.
- 1.1.5. The operation of these Procedures will be reviewed regularly to ensure their continued effectiveness.
- 1.1.6. Employees requiring assistance with these procedures are encouraged to contact the legal team at [legal.services@atsb.gov.au](mailto:legal.services@atsb.gov.au).

### 1.2. Organisational commitment

- 1.2.1. 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.
- 1.2.2. 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.
- 1.2.3. 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.
- 1.2.4. The ATSB is committed to effectively dealing with and investigating any disclosure of wrongdoing and taking appropriate action if an investigation finds any form of wrongdoing.

### 1.3. Defined terms

- 1.3.1. In these Procedures:

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<sup>1</sup> As a Commonwealth entity, having the same meaning as in the *Public Governance, Performance and Accountability Act 2013* (Cth): PID Act, s 8.

**ACIC** means the Australian Criminal Intelligence Commission.

**AFP** means the Australian Federal Police.

**ATSB** means the Australian Transport Safety Bureau.

**authorised officer** means the principal officer of the 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 PID Act.

**CEO** means the Chief Executive Officer of the ATSB.

**disclosable conduct** has the meaning given to it in section 29 of the PID Act.

**discloser**, in relation to a disclosure of information, means the person who makes the disclosure.

**FOI Act** means the *Freedom of Information Act 1982* (Cth).

**IGIS** means the Inspector-General of Intelligence and Security.

**NACC** means the National Anti-Corruption Commission.

**NACC Act** means the *National Anti-Corruption Commission Act 2022* (Cth).

**Ombudsman** means the Commonwealth Ombudsman.

**Ombudsman's Agency Guide** means the Agency Guide to the PID Act issued by the Ombudsman.

**personal work-related conduct** has the meaning given to it in section 29A of the PID Act.

**PID Act** means the *Public Interest Disclosure Act 2013* (Cth).

**PID Standard** means the *Public Interest Disclosure Standard 2013* (Cth) determined by the Ombudsman under section 74(1) of the PID Act

**PID Rules** means any rules in force at the time under section 83 of the PID Act.

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

**public interest disclosure** or **PID** 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. A full definition is contained in section 26 of the PID Act.

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

**recipient**, in relation to a disclosure of information, means the person to whom the information is disclosed.

**reprisal** or **takes a reprisal** has the meaning given to it in section 13 of the PID Act.

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

## 2. About Public Interest Disclosures

### 2.1. The PID legislative framework

2.1.1. The PID legislative framework promotes the integrity and accountability of the Commonwealth public sector, alongside schemes related to notifications, investigations, complaint handling and corruption. The PID framework consists of the following:

- (a) The PID Act;<sup>2</sup>
- (b) The *Public Interest Disclosure Standard 2013* (Cth) determined by the Commonwealth Ombudsman (**Ombudsman**) under section 74(1) of the PID Act (**PID Standard**);<sup>3</sup> and
- (c) Any rules in force at the time under section 83 of the PID Act (**PID Rules**).

2.1.2. This legislative framework is supported by the *Agency Guide to the PID Act* issued by the Ombudsman (**Ombudsman's Agency Guide**).<sup>4</sup>

### 2.2. What is a Public Interest Disclosure?

2.2.1. A disclosure of information will only be a PID to which these Procedures relate if it meets the following requirements:

- (a) it is made by a current or former public official (or a person deemed to be a public official);
- (b) the information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of 'disclosable conduct' as defined by the PID Act; and
- (c) the disclosure is made to an appropriate person, including an authorised officer of the supervisor of the discloser.

2.2.2. Only if each of the above requirements has been met will the disclosure be covered by the PID Act and the discloser have the benefit of the protections that it confers.

2.2.3. Anyone contemplating making a disclosure should carefully review the PID Act and seek legal advice, where appropriate, in order to determine whether the disclosure can be made in a way that attracts the protections of the PID Act.

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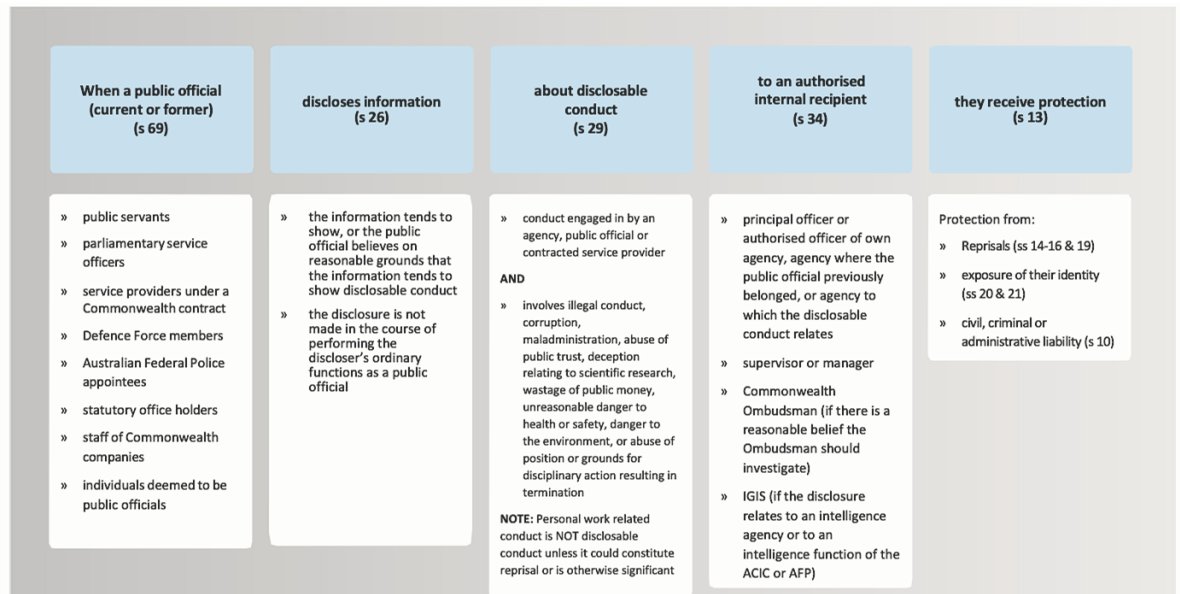
<sup>2</sup> Available at <https://www.legislation.gov.au/C2013A00133/latest/text>.

<sup>3</sup> Available at <https://www.legislation.gov.au/Current/F2023C00673>.

<sup>4</sup> Available on the Ombudsman's [Tools and Resources page](#).

2.2.4. The elements that make up an internal disclosure under the PID Act are illustrated in Figure 1 below. A flowchart of what happens when a disclosure is made is available on the Ombudsman’s website.<sup>5</sup>

*Figure 1. What is an internal disclosure<sup>6</sup>*



### 2.3. The ATSB’s authorised officers

2.3.1. Under the PID Act, an agency’s principal officer is also an authorised officer. The ATSB’s principal officer is the Chief Executive Officer (CEO).

2.3.2. The principal officer may also appoint in writing additional authorised officers. A list of authorised officers for the purposes of the PID Act who have been appointed by the CEO is available at the PID page on our [website](#) and [The Hub](#) .

2.3.3. A PID can be made to an authorised officer of the ATSB if the PID relates to the ATSB or if the discloser belongs, or last belonged, to the ATSB.

### 2.4. Public officials

2.4.1. To make a PID, a person must be a current or former ‘public official’.<sup>7</sup> Relevantly for the ATSB, this includes current and former Commissioners and staff of the ATSB, APS employees of other entities, any person who exercises or exercised powers under a Commonwealth law, and contracted service providers (including their officers, employees and subcontractors).<sup>8</sup>

<sup>5</sup> [https://www.ombudsman.gov.au/\\_data/assets/pdf\\_file/0020/301565/Handling-a-PID-Flowchart-November-2023.pdf](https://www.ombudsman.gov.au/_data/assets/pdf_file/0020/301565/Handling-a-PID-Flowchart-November-2023.pdf).

<sup>6</sup> Source: Ombudsman’s Agency Guide, [Chapter 2](#), part 2.2.1.

<sup>7</sup> PID Act, s 26(1)(a).

<sup>8</sup> Section 69 of the PID Act contains a complete list of who is considered a public official.



2.4.2. An authorised officer may also deem an individual is a public official if they reasonably believe the individual has information about wrongdoing and proposes to make a PID.<sup>9</sup>

### **3. Making a Public Interest Disclosure**

#### **3.1. What is disclosable conduct?**

3.1.1. A current or former public official can disclose information that they believe, on reasonable grounds, tends to show ‘disclosable conduct’.

3.1.2. Disclosable conduct is conduct of a kind mentioned in Subsections 3.1.3 and 3.1.4 below that is engaged in by:

- (a) an agency;
- (b) a public official in connection with their position; or
- (c) a contracted Commonwealth service provider in connection with entering into or giving effect to the contract.

3.1.3. Disclosable conduct is conduct that:

- (a) contravenes a law of the Commonwealth, a State or a Territory;
- (b) occurs in a foreign country and contravenes a law that is in force in the foreign country, applies to the agency, public official or contracted service provider, and corresponds to a law in force in the Australian Capital Territory;
- (c) perverts or attempts to pervert the course of justice;
- (d) involves or is engaged in for the purpose of corruption of any kind;
- (e) constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent;
- (f) is an abuse of public trust;
- (g) is fabrication, falsification, plagiarism or deception relating to scientific research, or other misconduct in relation to scientific research, analysis or advice;
- (h) results in wastage of public money or public property;
- (i) unreasonably endangers the health and safety, or results in or increases a risk of danger to the health or safety, of one or more persons;
- (j) results in a danger to, or results in or increases a risk of danger to, the environment;  
or
- (k) is prescribed by the PID rules.

3.1.4. Disclosable conduct also includes conduct by a public official that:

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<sup>9</sup> PID Act, s 70. Examples of this may be where an individual is not a public official but they have ‘inside information’ about an agency’s wrongdoing, such as current or former volunteers, employees of an organisation that receives grant funding from the Australian Government, or state and territory department officials who work alongside Commonwealth officials.

- (a) involved abuse of the public official’s position; or
- (b) could, if proved, give reasonable grounds for disciplinary action resulting in the termination of the public official’s engagement or appointment.<sup>10</sup>

### 3.2. Exception for ‘personal work-related conduct’

3.2.1. Since 1 July 2023, the PID Act has incorporated a definition of ‘personal work-related conduct’, being conduct (by act or omission) engaged in by a public official (the **first official**) in relation to another public official (the **second official**) that:

- (a) occurs in relation to, or in the course of, the second official’s engagement or appointment as a public official and/or their official employment, or exercise of functions as powers, as a public official; and
- (b) has, or would tend to have, personal implications for the second official.<sup>11</sup>

3.2.2. Despite Subsections 3.1.3 and 3.1.4 of these Procedures, the PID Act provides that personal work-related conduct is not disclosable conduct unless one of the following exceptions applies:

- (a) the conduct would constitute taking a reprisal against another person, or an offence under section 19 of the PID Act; or
- (b) the conduct is of such a significant nature that it would undermine public confidence in an agency or agencies *or* has other significant implications for an agency or agencies.<sup>12</sup>

3.2.3. To avoid doubt, if a disclosure includes information that tends to show (or that may tend to show) disclosable conduct, the disclosure is not prevented from being a PID only because:

- (a) the disclosure includes other information; and
- (b) the other information tends to show (or may tend to show) personal work-related conduct.<sup>13</sup>

3.2.4. Further guidance is available in the fact sheet [Personal work-related conduct](#).

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<sup>10</sup> PID Act, s 29(2).

<sup>11</sup> PID Act, s 29A. The following are examples of personal work-related conduct:

- (a) conduct relating to an interpersonal conflict between the first official and the second official (including, but not limited to, bullying or harassment);
- (b) conduct relating to the transfer or promotion of the second official;
- (c) conduct relating to the terms and conditions of engagement or appointment of the second official;
- (d) disciplinary action taken in relation to the second official;
- (e) the suspension or termination of the second official’s employment or appointment as a public official;
- (f) conduct in relation to which the second official is, or would have been, entitled to review under section 33 of the Public Service Act 1999 or under any comparable review process that forms, or formed, part of the second official’s terms or conditions of engagement or appointment.

<sup>12</sup> PID Act, s 29(2A).

<sup>13</sup> PID Act, s 29(2B).

### **3.3. How to make a Public Interest Disclosure**

- 3.3.1. If a public official is considering making a disclosure, the public official can, in the first instance, seek advice from an authorised internal recipient or the Ombudsman.
- 3.3.2. Generally, to constitute a PID, the disclosure must first be made to an ‘authorised internal recipient’ or to a supervisor of the discloser. An authorised internal recipient is generally an authorised officer of the ATSB (see Subsection 2.3 above).
- 3.3.3. However, a disclosure may instead be made to an authorised officer of the Ombudsman if the discloser believes on reasonable grounds that it would be appropriate for the disclosure to be investigated by the Ombudsman.<sup>14</sup>
- 3.3.4. In some limited circumstances, a disclosure can be made to an external party, however strict requirements must be met for such external disclosures to be afforded the protections contained in the PID Act.<sup>15</sup> See Section 10.2 of these Procedures.
- 3.3.5. Information conveyed in the course of a public official’s ordinary functions is not a PID,<sup>16</sup> for example information that arises in the course of routine discussions about suspected fraud incidents by members of an agency’s fraud team. In that situation, the public official would need to make it clear that they intend that the disclosure be a PID.
- 3.3.6. If the recipient is unsure whether the information disclosed is a PID, they should err on the side of caution and refer the information to an authorised officer to determine whether it is indeed a PID.<sup>17</sup> The recipient should in all cases let the public official know that the information will be referred to an authorised officer for assessment, and must comply with the requirements set out in Sections 4, 5 and 6 of these Procedures (as applicable).
- 3.3.7. More information on making and receiving internal disclosures can be found in [Chapter 4](#) of the Ombudsman’s Agency Guide.

### **3.4. Forms of disclosure**

- 3.4.1. A PID can be made orally or in writing.<sup>18</sup>
- 3.4.2. A PID can be made anonymously or openly.<sup>19</sup> Further information on anonymous disclosures can be found in Subsection 3.7 below.
- 3.4.3. Generally, the person making the disclosure does not need to expressly state – or even intend – the disclosure is made under the PID Act. The simple act of conveying

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<sup>14</sup> A disclosure can also be made to an intelligence agency or to the Inspector-General of Intelligence and Security (IGIS) where it the discloser believes on reasonable grounds that it would be appropriate to do so: PID Act, s 34.

<sup>15</sup> PID Act, s 26, Item 2.

<sup>16</sup> PID Act, s 26(1), Item 1, column 3, paragraph (b).

<sup>17</sup> For example, this may arise where the information disclosed contains conduct that could be personal work-related conduct but may also include disclosable conduct. See Sections 3.2 of these Procedures for more information on what constitutes personal work-related conduct.

<sup>18</sup> PID Act, s 28(1).

<sup>19</sup> PID Act, s 28(2).

information about possible disclosable conduct (per its definition in Subsection 3.1 above) to a person entitled to receive a PID Act disclosure is sufficient.

### **3.5. Sending or making the disclosure**

- 3.5.1. The ATSB has a *Report a public interest disclosure* form on its [website](#) and [The Hub](#) for making a disclosure. A list of authorised officers appointed by the CEO for the purposes of the PID Act is located at the PID page on [The Hub](#).

#### By email

You can contact an authorised officer by email at [PID@atsb.gov.au](mailto:PID@atsb.gov.au). All authorised officers will be able to view all emails sent to [PID@atsb.gov.au](mailto: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]**”.

#### By post

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

GPO Box 321

CANBERRA CITY 2601

#### In person

12 Moore Street, Canberra City ACT

Alternatively, the discloser can visit an authorised officer personally or call them over the telephone. If a PID is made orally, the authorised officer or supervisor receiving it should make a record of what was said. Best practise is to ask the discloser to sign or confirm in writing the record to acknowledge that it is accurate.

### **3.6. Advice for disclosers in making a disclosure**

- 3.6.1. Disclosers should be aware that the sooner a concern is raised, the easier it is for the ATSB to take action.
- 3.6.2. It is not the role of the discloser to ‘investigate’ the matter themselves before making a disclosure as this may hinder a future investigation.
- 3.6.3. A disclosure should contain information that is clear, factual and as far as possible devoid of speculation, personal attacks, unrelated events and emotive language. Where available, it should contain supporting evidence and identify any witnesses to the disclosable conduct.

- 3.6.4. A discloser should consider covering as many of the following matters as possible in the disclosure:
- (a) their name and contact details (unless they choose to exercise their right to anonymity);
  - (b) a description of the suspected wrongdoing;
  - (c) who they believe committed the suspected wrongdoing;
  - (d) when and where the suspected wrongdoing happened;
  - (e) how they became aware of the suspected wrongdoing;
  - (f) whether the suspected wrongdoing has been reported to anyone else;
  - (g) if so, any steps that person has taken to fix, stop or prevent it; and
  - (h) whether they are concerned about possible reprisal as a result of making a disclosure.

### **3.7. Anonymous disclosures**

- 3.7.1. Public officials can make anonymous disclosures if they wish to do so. A disclosure is considered anonymous if:
- (a) the identity of the discloser is not revealed and if no contact details for the discloser are provided; or
  - (b) the discloser does not disclose their name but does provide anonymous contact details.
- 3.7.2. Disclosers may also choose to use a pseudonym where they do not wish others to know their identity but where it is already known/identifiable to the recipient.
- 3.7.3. However, if a disclosure is made anonymously and no contact details are provided, it may prevent investigation of the disclosure.
- 3.7.4. There are reasons why disclosers should consider identifying themselves to an authorised officer, or at minimum at least providing a means of contact:
- (a) 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;
  - (b) it is more difficult to ensure protection from reprisal if the ATSB does not know the discloser's identity;
  - (c) 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.
  - (d) 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 Investigator further information or assistance if needed; and

(e) 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.

3.7.5. 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.

3.7.6. Information on risk assessments for anonymous disclosers can be found at Subsection 7.4 of these Procedures.

## **4. Procedures for supervisors**

### **4.1. Application**

4.1.1. Under the PID Act, supervisors are public officials who supervise or manage individuals who make PIDs.

4.1.2. Section 4 applies to supervisors who are *not* authorised officers. See Section 5 for procedures for authorised officers.

4.1.3. Further guidance for supervisors is available in the Ombudsman's [Guide – Supervisors and the PID Act](#) and in the fact sheet [New responsibilities and powers of Supervisors](#).

### **4.2. Responsibilities of supervisors**

4.2.1. Where a public official discloses information to their supervisor and that supervisor has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the supervisor is required to do the following in accordance with section 60A(2) :

(a) inform the discloser that their disclosure could be treated as an internal disclosure;

(b) explain to the discloser the next steps in the public interest disclosure process, including the referral of the disclosure to an authorised officer, and its potential allocation and investigation under the PID Act;

(c) advise the discloser about the circumstances in which a disclosure must be referred to an agency, or other person or body, under another law of the Commonwealth, including referral to the National Anti-Corruption Commission (NACC) if the disclosure appears to involve serious or systemic corrupt conduct;

(d) explain to the discloser the civil and criminal protections the PID Act provides to disclosers, and people assisting with the handling of a disclosure;

(e) as soon as practicable after receiving the disclosure, give the information to an authorised officer of the ATSB; and

(f) where the information has been given to an authorised officer, advise the discloser of the name and contact details of that authorised officer (if the discloser is able to be identified and contacted).

- 4.2.2. In providing the information to an authorised officer, the supervisor must also make a written risk assessment of any reprisal action which may be taken against the discloser and provide that written assessment to the authorised officer. See Section 5 of these Procedures for detailed guidance on risk assessments and the risk assessment template at the PID page on [The Hub](#).
- 4.2.3. The supervisor must make a written record of the fact of the disclosure and, if the disclosure is made orally, make a written record of the substance of the disclosure with the date and time of the disclosure noted. The discloser should where possible be asked to confirm in writing or by signature the accuracy of this record.
- 4.2.4. Supervisors should also:
- (a) adhere to the PID Act confidentiality requirements when handling PIDs (see Section 13 of these Procedures); and
  - (b) look at the substance of the report from the discloser rather than focusing on what they believe to be the person’s motive for reporting, particularly where there may be a history of conflict in the workplace.
- 4.2.5. Supervisors have a key role in ensuring that the workplace culture supports the making of PIDs. They can help to do so by:
- (a) familiarising themselves with the application and framework, and with these Procedures;
  - (b) being approachable to staff who may wish to make a disclosure to them or raise concerns;
  - (c) supporting officials who they know have made a PID and ensuring they are protected from reprisal;
  - (d) increasing management supervision of the workplace if necessary;
  - (e) ensuring identified problems in the workplace are corrected; and
  - (f) setting an example for officials.

## **5. Procedures for authorised officers**

### **5.1. Role of authorised officers**

- 5.1.1. Authorised officers of the ATSB receive and allocate PIDs relating to the ATSB in accordance with the PID Act and with these Procedures. A flowchart of responsibilities of authorised officers is available on the Ombudsman’s website.<sup>20</sup>

### **5.2. Responsibilities of authorised officers**

- 5.2.1. When an authorised officer receives a disclosure of information, they must:

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<sup>20</sup> [https://www.ombudsman.gov.au/\\_data/assets/pdf\\_file/0019/301564/Authorised-Officer-Flowchart-October-2023.pdf](https://www.ombudsman.gov.au/_data/assets/pdf_file/0019/301564/Authorised-Officer-Flowchart-October-2023.pdf).

- (a) consider whether the discloser understands the PID Act;
  - (b) perform an assessment of the disclosure;
  - (c) decide whether to allocate the PID to a principal officer for consideration; and
  - (d) notify the discloser and the Ombudsman of the allocation.
- 5.2.2. The authorised officer is also responsible for conducting a risk assessment (see Subsection 7.2).

### **5.3. Providing initial information to discloser**

- 5.3.1. Within 14 days of a disclosure being given to or made to the authorised officer, the authorised officer will provide the discloser with information about his or her powers to decide to investigate the disclosure; not to investigate the disclosure further; or to investigate the disclosure under a separate power.
- 5.3.2. Where an individual discloses, or proposes to disclose, information to an authorised officer and the authorised officer has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, and the individual may be unaware of the consequences of making a disclosure under the PID Act, the authorised officer must, in accordance with section 60(1) of the PID Act:
- (a) inform the person that the disclosure could be treated as an internal disclosure for the purposes of the PID Act;
  - (b) explain to the person what the PID Act requires for a disclosure to be an internal disclosure;
  - (c) explain to the person the circumstances in which a disclosure must be referred to another agency, person or body under another law of the Commonwealth;<sup>21</sup>
  - (d) advise the person of any orders or directions that may affect disclosure of the information; and
  - (e) explain to the person the protections provided by the PID Act to persons who make disclosures under that Act.
- 5.3.3. Further guidance on authorised officers' responsibilities can be found in the fact sheet [\*New responsibilities and powers of Authorised Officers.\*](#)

### **5.4. Considering whether or not a disclosure should be allocated**

- 5.4.1. The authorised officer must make a written record of the fact of the disclosure and, if the disclosure is made orally, make a written record of the substance of the disclosure with the date and time of the disclosure noted. The discloser should where possible be asked to confirm in writing or by signature the accuracy of this record.
- 5.4.2. The authorised officer must use their best endeavours to decide within 14 days whether or not to allocate the disclosure. This requires deciding whether they are satisfied, on

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<sup>21</sup> Such as referral to the NACC if the disclosure could involve serious or systemic conduct.



reasonable grounds, that there is a reasonable basis on which the disclosure could be considered to be an internal disclosure.

5.4.3. Matters that the authorised officer may base this decision on include:

- (a) that the disclosure has not been made by a person who is, or was, a public official;
- (b) that the disclosure was not made to an authorised internal recipient or supervisor;
- (c) that the disclosure is not about disclosable conduct;
- (d) that the person who is alleged to have carried out the disclosable conduct was not a public official at the time they are alleged to have carried out that conduct;
- (e) that the conduct would be more appropriately investigated under another law or power; or
- (f) that the disclosure is not otherwise a public interest disclosure within the meaning of the PID Act.

5.4.4. The authorised officer may obtain information and make such inquiries as they see fit, for the purpose of deciding the allocation of the disclosure.

## **5.5. Where the authorised officer decides to not allocate the disclosure**

5.5.1. Where the authorised officer decides that the disclosure will not be allocated, they must, if reasonably practicable, given written notice to the discloser of:

- (a) the decision not to allocate the disclosure and the reasons why the disclosure has not been allocated; and
- (b) if the authorised officer is satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power, the details of:
  - (i) the other law or power;
  - (ii) the agency or other person or body to which the conduct has been, or is to be referred;
  - (iii) the steps taken or proposed to be taken to refer the conduct disclosed, or to facilitate its referral, for investigation; and
  - (iv) otherwise, any other course of action that might be available to the discloser under another law or power.

5.5.2. If the discloser cannot be contacted, the authorised officer should still make a written record of their decision and the reasons for it, as well as the reasons why contacting the discloser was not practicable and the date, time and methods of any efforts to contact the discloser.

5.5.3. The authorised officer must also notify the Ombudsman of their decision not to allocate the disclosure, except to the extent (if any) to which the conduct disclosed relates to an intelligence agency, the Australian Criminal Intelligence Commission (ACIC) or the

Australian Federal Police (AFP) in relation to that agency's intelligence functions.<sup>22</sup> This notice must be done using *Form 4 – Notification of decision not to allocate*<sup>23</sup> and contain the matters listed in paragraphs 5.5.1(a) and (b) above.

- 5.5.4. If the conduct disclosed relates to an intelligence agency, ACIC or the AFP in relation to their intelligence functions, give written notice to the Inspector-General of Intelligence and Security (IGIS) containing the matters listed in paragraphs 5.5.1(a) and (b) above.<sup>24</sup>
- 5.5.5. If the authorised officer is satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power, take reasonable steps as soon as reasonably practicable to refer the conduct disclosed, or facilitate its referral, for investigation under the other law or power.
- 5.5.6. An appropriate written record must be kept by the authorised officer of:
  - (a) the decision and the reasons for the decision;
  - (b) whether notice was given to the discloser, and if not, why not;
  - (c) if notice was given, a copy of the notice given to the discloser must be retained, which includes confirmation of the day and time the notice was given and the means by which the notice was given.

## **5.6. Stop action directions under the NACC Act**

- 5.6.1. If a stop action direction under the *National Anti-Corruption Commission Act 2022* (Cth) (NACC Act) prevents the authorised officer from allocating a disclosure, the authorised officer must follow the notice requirements and other procedures set out in Subsection 9.3 of these Procedures.

## **5.7. Where the authorised officer decides to allocate the disclosure**

- 5.7.1. If the authorised officer decides to allocate the disclosure, they must determine which agency it is appropriate to allocate the PID to. Generally, it is likely that PIDs that are made to the ATSB and which relate to the ATSB should be investigated by the ATSB.
- 5.7.2. In determining where to allocate a PID, the authorised officer must have regard to:
  - (a) the principle that an agency should not handle the PID unless some or all of the suspected disclosable conduct relates to that agency (unless the agency is the Ombudsman, IGIS, or an investigative agency); and
  - (b) any other matters as the authorised officer considers relevant to their decision where to allocate a PID, including any recommendation from the Ombudsman or IGIS under section 55 of the PID Act about the allocation of the disclosure.

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<sup>22</sup> PID Act, s 44A(3)(b).

<sup>23</sup> Available on the Ombudsman's [Tools and Resources page](#).

<sup>24</sup> PID Act, s 44A(3)(c).

- 5.7.3. Before making the decision, the authorised officer must also consider whether they have satisfied their obligations to inform the discloser of certain matters in relation to the disclosure (see Subsection 5.3.2 of these Procedures).
- 5.7.4. In making this determination, the authorised officer must not allocate the PID to an agency other than the ATSB unless the authorised officer of that other agency (the **recipient agency**) has consented to the allocation.
- 5.7.5. In determining where to allocate a PID, the authorised officer may obtain information in a manner they think fit.
- 5.7.6. Where the authorised officer has decided that a disclosure will be allocated, they must give written notice to the following persons/agencies:<sup>25</sup>
- (a) the principal officer of each agency to which the disclosure was allocated;
  - (b) the Ombudsman, by way of a completed *Form 1 – Notification of an allocation decision*,<sup>26</sup> unless the recipient agency is the Ombudsman, the IGIS, an intelligence agency, or ACIC or the AFP in relation to their intelligence functions;
  - (c) the IGIS if the recipient agency is, or the disclosure was allocated to, an intelligence agency or ACIC or the AFP in relation to their intelligence functions; and
  - (d) the discloser, if the discloser’s details are known.
- 5.7.7. The written notice referred to in Subsection 5.7.6 is to include the following matters:
- (a) the allocation to the agency;
  - (b) the information that was disclosed;
  - (c) the conduct disclosed; and
  - (d) if the discloser’s name and contact details are known to the authorised officer, and the discloser consents to the persons and agencies mentioned in section Subsection 5.7.6 being informed—the discloser’s name and contact details.
- 5.7.8. The authorised officer must also as soon as reasonably practicable give a copy of the allocation notice mentioned in Subsection 5.7.6 to the discloser, if reasonably practicable to do so.
- 5.7.9. An appropriate written record must be kept by the authorised officer of:
- (a) the decision (including the name of the agency or agencies to which the handling of the PID has been allocated);
  - (b) the reasons for the decision to allocate the handling of the PID in that way;
  - (c) if the handling of the PID has been allocated to an agency other than the ATSB, a record of the consent of the authorised officer of that agency to the allocation;

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<sup>25</sup> PID Act, s 44.

<sup>26</sup> Available on the Ombudsman’s [Tools and Resources page](#).

- (d) any consent provided by the discloser;
- (e) whether the notice (or a copy of the notice) was given to the discloser, and if not, why not; and
- (f) if the notice was given to the discloser, the day and time that the discloser was given the notice, the means by which the notice was given, and the matters included in the notice.

5.7.10. Further information and guidance on the allocation of disclosures can be found in [Chapter 5](#) of the Ombudsman’s Agency Guide.

## **6. Procedures for principal officers**

### **6.1. Role of principal officers**

6.1.1. The CEO of the ATSB is the principal officer for the purposes of the PID Act. They may delegate all or some of their powers as principal officer under the PID Act to:

- (a) other ATSB employees; or
- (b) other public officials who belong to the ATSB.

6.1.2. Any reference in these Procedures to the principal officer is to be taken to be a reference to the CEO as well as to persons who may be delegated powers of the CEO as principal officer under the PID Act from time to time.

6.1.3. A person exercising delegated powers or functions of the principal officer must comply with any directions of that principal officer.

### **6.2. Responsibilities of principal officers**

6.2.1. The principal officer is responsible for considering PIDs that are allocated to the ATSB by an authorised officer. The following steps must be taken in performing this function:

- (a) notify the discloser of the allocation;
- (b) consider whether an investigation is required;
- (c) if an investigation is required, conduct the investigation; and
- (d) comply with the relevant post-investigation notification requirements.

6.2.2. The principal officer has 90 days from the allocation date in which to complete an investigation report in relation to a PID that is allocated to them. If further time is required, the principal officer must apply to the Ombudsman for an extension of time at least 10 business days prior to the expiry of the relevant period using [Form 3 – Extension of time to investigate a PID](#).

6.2.3. Further information on the responsibilities of principal officers can be found in [Chapter 3](#) of the Ombudsman’s Agency Guide and in the fact sheet [New responsibilities and powers of Principal Officers](#).

### **6.3. Notifying the discloser**

- 6.3.1. As soon as practicable after a PID is allocated to a principal officer for consideration, the principal officer must inform the discloser that the following options are available to the principal officer in considering their PID:
- (a) decide not to investigate the PID further;
  - (b) decide to investigate the PID under a separate investigative power;
  - (c) decide to investigate the disclosure under another law or power; or
  - (d) decide to investigate the PID.
- 6.3.2. In practice, where the authorised officer has allocated the disclosure to their own agency, this information can be given to the discloser at the same time as the notice of allocation (see Subsection 5.7.6 of these Procedures).

### **6.4. Considering whether an investigation is required**

- 6.4.1. When a PID is allocated to a principal officer, the principal officer must consider whether they should exercise their PID Act section 48 discretion to not investigate.
- 6.4.2. This discretion is available in circumstances where the principal officer is satisfied that any of the grounds listed in section 48 of the PID Act apply. These circumstances include:
- (a) the discloser is not a current or former public official (and a determination has not been made under section 70 of the PID Act – see Subsection 2.4.2 of these Procedures);
  - (b) the information does not to any extent concern serious disclosable conduct;
  - (c) the disclosure is frivolous or vexatious;
  - (d) the disclosure is the same or substantially the same as a disclosure that has been investigated under the PID Act;
  - (e) the disclosure is substantially the same as a disclosure that has already been investigated, or is currently being investigated, or was the subject of a previous decision not to investigate under section 48;
  - (f) the conduct disclosed, or substantially the same conduct disclosed, is being investigated under another law or power and it would be inappropriate to conduct a PID investigation at the same time;
  - (g) the conduct disclosed, or substantially the same conduct disclosed, has already been investigated under another law or power, and there are no further matters concerning the conduct that warrant investigation;
  - (h) the conduct disclosed would be more appropriately investigated under another law or power;

- (i) 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
- (j) it is impracticable to investigate the disclosure because:
  - (i) the discloser has not revealed their name and contact details;
  - (ii) the discloser has refused or has failed or is unable to give the Investigators the information they requested; or
- (k) of the age of the information.

6.4.3. More detailed guidance on each of these grounds can be found in sections 6.2.1 to 6.2.6 of [Chapter 6](#) of the Ombudsman's Agency Guide.

6.4.4. If the investigation has already started, the principal officer may subsequently decide to stop the investigation on one of the grounds set out in Subsection 6.4.2 above.

## **6.5. If the principal officer decides not to investigate or investigate further**

6.5.1. If the principal officer decides not to investigate (or further investigate) a disclosure under the PID Act, they must comply with the steps set out in this Subsection 6.5.

6.5.2. As soon as reasonably practicable, the principal officer (or their delegate) must provide written notice to the discloser that they have decided not to investigate (or further investigate) the disclosure,<sup>27</sup> identifying:

- (a) the reasons for the decision not to investigate; and
- (b) if the principal officer decides that the disclosure would be more appropriately investigated under another law or power, details of:
  - (i) the other law or power;
  - (ii) the agency or other person or body to which the conduct has been or will be referred;
  - (iii) the steps taken or proposed to be taken for the conduct to be referred or to facilitate referral. The principal officer may delete from the reasons any information that would cause the document to:
    - A be exempt for the purposes of Part IV of the *Freedom of Information Act 1982* (Cth) (**FOI Act**);
    - B have or be required to have a national security or other protective security classification; or
    - C contain intelligence information.

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<sup>27</sup> PID Act, s 50(1)(b).

- 6.5.3. The notice referred to in Subsection 6.5.2 can be provided in a single document along with the notice of the allocation of the disclosure.<sup>28</sup> However, this approach should only be used if the two decisions are made close in time.
- 6.5.4. If the discloser cannot be contacted, the principal officer should still make a written record of their decision and the reasons for it, as well as the reasons why contacting the discloser was not practicable and the date, time and methods of any efforts to contact the discloser.
- 6.5.5. The principal officer must also provide written notice to the Ombudsman of the decision not to investigate (or further investigate) and the reasons for that decision.<sup>29</sup> If the principal officer decides that the disclosure would be more appropriately investigated under another law or power, the principal officer must provide the Ombudsman with details of:
- (a) the other law or power;
  - (b) the agency or other person or body to which the conduct has been or will be referred; and
  - (c) the steps taken or proposed to be taken for the conduct to be referred or to facilitate referral.
- 6.5.6. The written notice to the Ombudsman must be given using the Ombudsman's *Form 2 – Notification of a decision not to investigate or not to investigate further*.<sup>30</sup>

## **6.6. If the disclosure cannot be investigated because of a stop action direction**

- 6.6.1. If the disclosure cannot be investigated or investigated further because of a stop action direction under the NACC Act, the principal officer must give written notice of the stop action direction to the discloser and the Ombudsman as soon as reasonably practicable. Notice to the Ombudsman must be given using the Ombudsman's *Form 6 – Notification of a stop action direction*.<sup>31</sup>
- 6.6.2. The principal officer must, as soon as reasonably practicable, inform the discloser if the principal officer investigates, or further investigates, a disclosure that is no longer the subject of a stop action direction under the NACC Act.
- 6.6.3. See Subsection 9.3 of these Procedures for detailed guidance on stop action directions issued under the NACC Act.

## **6.7. If the principal officer decides to investigate the disclosure**

- 6.7.1. Where the principal officer decides that the section 48 discretion to not investigate the PID act does *not* apply, they must commence an investigation into the PID unless there

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<sup>28</sup> PID Act, s 50(4).

<sup>29</sup> PID Act, s 50A.

<sup>30</sup> Available on the Ombudsman's [Tools and Resources page](#).

<sup>31</sup> Available on the Ombudsman's [Tools and Resources page](#).

is a stop action direction. The steps for the investigation process are provided in Section 8 of these Procedures.

## **7. Assessing the risk of reprisals**

### **7.1. Reprisals**

7.1.1. The PID Act imposes a duty on principal officers and authorised officers to take reasonable steps to protect public officials who belong to the agency (including the discloser and any witnesses) against reprisals.<sup>32</sup> To satisfy this duty, the procedures within this Section 6.7.1 must be followed. They involve the following:

- (a) Conducting a risk assessment to assess the specific circumstances that may indicate a risk of reprisal. This should be undertaken as soon as practicable following receipt or notification of the disclosure.
- (b) Putting in place appropriate strategies to prevent the risk of reprisal. An assessment of the risk of reprisal is to be undertaken, as soon as is practicable, following the receipt or notification of the disclosure.

### **7.2. Conducting a risk assessment**

7.2.1. Where an authorised officer allocates a disclosure, they (or the supervisor, if appropriate) must conduct a risk assessment to assess the likelihood and the seriousness of any potential reprisals, in accordance with Risk assessment template available on [The Hub](#) and the matters set out in this Subsection 7.2.

7.2.2. In conducting the risk assessment, the authorised officer should also have regard to any assessment of risk provided under these Procedures by the discloser's supervisor. The authorised officer also may consult with, or refer the preparation of the risk assessment, to another area of the ATSB where appropriate.

7.2.3. It may be helpful to ask the discloser why they are reporting wrongdoing and whether they fear a reprisal from anybody (and if so, who). These questions can be useful for:

- (a) assessing likely perceptions amongst staff as to why the discloser came forward and how colleagues may respond if the discloser's identity becomes known;
- (b) understanding the discloser's expectations about how other staff might perceive their disclosure; and
- (c) identifying the motives of staff allegedly involved in reprisals if a later investigation becomes necessary.

7.2.4. The importance between the discloser and the subject of the disclosure is particularly important. Accordingly, the risk assessment must examine:

- (a) whether the two work together;

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<sup>32</sup> PID Act, s 59(9) (for principal officers) and s 60(2) (for authorised officers).



- (b) whether they are in each other's reporting lines or have managers or staff in common;
- (c) whether they are physically located in the same office; and
- (d) whether they socialise outside of work.

7.2.5. Further information and guidance on conducting risk assessments can be found in section 5.4 of [Chapter 5](#) and sections 8.5.2 to 8.5.4 of [Chapter 8](#) of the Ombudsman's Agency Guide, and in the Ombudsman's [Guide to Assessing and Managing the Risk of Reprisal](#).

### **7.3. Development of a risk mitigation strategy**

- 7.3.1. Where the risk level associated with reprisal is assessed as anything greater than low, the authorised officer 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 Section 11 and Subsection 12.2 of these Procedures. In appropriate circumstances, it could include raising the matter with employees by reminding staff that taking or threatening to take a reprisal against a discloser is a criminal offence.
- 7.3.2. The authorised officer should monitor and review the risk assessment as necessary throughout the investigation process, and continue if necessary, after the investigation is completed as the risk of reprisal may persist or even increase.
- 7.3.3. The principal officer or delegate to whom the matter is allocated will usually also take responsibility for the risk assessment and its maintenance and any related actions.

### **7.4. Risk assessments for anonymous disclosers**

- 7.4.1. If an anonymous disclosure is made, it may be difficult for the ATSB to protect the discloser and other staff from reprisal or workplace conflict. However, a risk assessment should still be conducted where an anonymous disclosure is received, to assess whether the discloser's identity can be readily ascertained or may become apparent during an investigation.
- 7.4.2. Where a person such as another staff member makes an assumption about the identity of a discloser, the risk of reprisal may escalate and require prevention or mitigation strategies to be implemented, such as:
  - 7.4.3. raising the issue with staff;
  - 7.4.4. reminding them of the ATSB's obligations under the PID Act to protect public officials in their agency from reprisal; and
  - 7.4.5. reminding them that reprisal and threats to cause reprisal are criminal offences, and they may also be liable to civil action from such conduct.

7.4.6. The principal officer also has an obligation to take reasonable steps to provide ongoing training and education to officials in their agency about the PID Act,<sup>33</sup> including on the protections set out in Section 11 and Subsection 12.2 of these Procedures.

## **8. Investigations**

### **8.1. Conducting an investigation**

8.1.1. The CEO of the ATSB has delegated the investigative functions under the PID Act to:

- SES Officers;
- Head, Legal, Governance and Strategic Policy;
- Head, Human Resources.<sup>34</sup>

Any references in this Section to the principal officer include references to those delegate investigators.

8.1.2. Where appropriate, the principal officer may delegate the investigative function to a contractor. This may be appropriate and necessary in the following situations:

- (a) when investigation of the PID requires a skillset or subject matter expertise beyond that available within the ATSB;
- (b) when the ATSB is handling a high number of PID investigations and internal staff cannot be mobilised due to existing full caseloads; and/or
- (c) where the risk of real or perceived bias or conflict is most appropriately (and effectively) managed by engaging an external contractor.

8.1.3. Further guidance on the engagement of an external contractor to investigate a PID can be found in section 7.3.2.1 of [Chapter 7](#) of the Ombudsman's Agency Guide.

8.1.4. If an authorised officer allocates a matter for investigation, the principal officer must follow a number of steps under the PID Act. Further guidance on responsibilities and powers of investigation officers can be found in the fact sheet [New responsibilities and powers of Investigation Officers](#).

### **8.2. General principles**

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

- (a) maintaining the confidentiality of the identity of the discloser will be paramount when conducting the investigation (see Section 13 of these Procedures) unless consent to disclose their identity has been provided;
- (b) documentation of actions, conversations and decisions relating to a disclosure should be kept;

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<sup>33</sup> PID Act, s 59(7).

<sup>34</sup> PID Act, s 771(1).

- (c) the evidence relied on in an investigation must be relevant to the investigation;
  - (d) the investigation will be conducted in accordance with the principles of procedural fairness;<sup>35</sup>
  - (e) the investigation will be conducted in accordance with the [Australian Government Investigation Standards 2022](#) (AGIS);
  - (f) a person who is the subject of the investigation will have an opportunity to respond or provide information;
  - (g) in the event that an interview is to be conducted, it will be conducted in a manner consistent with the PID Standard;<sup>36</sup>
  - (h) a decision on whether evidence is sufficient to prove a fact will be determined on the balance of probabilities;<sup>37</sup> and
  - (i) findings will be made on the basis of relevant and logically probative evidence.<sup>38</sup>
- 8.2.2. Aside from compliance with these principles, the principal officer (or their delegate) are free to conduct the investigation as they see appropriate. The way in which the investigation is conducted may vary depending on the alleged conduct which is being investigated.
- 8.2.3. During a PID investigation, the principal officer may adopt findings contained in a report of an investigation or inquiry under another law or power (including procedures established under a law of the Commonwealth) or under the PID Act.
- 8.2.4. Public officials are required to use their best endeavours to assist the principal officer or other relevant agency in the conduct of an investigation under the PID Act.
- 8.2.5. Throughout the PID investigation, the principal officer should continue to consider whether one or more of the discretionary grounds in section 48 of the PID Act applies to the disclosure. If the principal officer forms the view that one or more grounds apply, the principal officer should cease investigating and follow the appropriate process detailed in Subsection 6.4 of these Procedures.
- 8.2.6. Further information and guidance on conducting an investigation can be found in [Chapter 7](#) of the Ombudsman’s Agency Guide.

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<sup>35</sup> More information on procedural fairness in a PID investigation be found in section 7.3.3.8 of [Chapter 7](#) of the Ombudsman’s Agency Guide.

<sup>36</sup> More information on interviewing witnesses can be found in section 7.3.3.5 of [Chapter 7](#) of the Ombudsman’s Agency Guide.

<sup>37</sup> More information on the standard of proof can be found in section 7.3.3.6 of [Chapter 7](#) of the Ombudsman’s Agency Guide.

<sup>38</sup> More information on the evidence that can be taken into account can be found in section 7.3.3.7 of [Chapter 7](#) of the Ombudsman’s Agency Guide.

### **8.3. Notification of investigation**

- 8.3.1. When the principal officer has decided to investigate a PID, if reasonably practicable, they must give written notice to the discloser<sup>39</sup> informing them:
- (a) that they are investigating the disclosure;
  - (b) of the estimated length of the investigation; and
  - (c) that they still hold the discretion to cease investigating under section 48 of the PID Act.
- 8.3.2. If the agency that allocated the disclosure is the same as the agency which will investigate the disclosure, this notice can be given in the same document.<sup>40</sup>
- 8.3.3. If the discloser cannot be contacted, the principal officer should still make a written record of their decision and the reasons for it, as well as the reasons why contacting the discloser was not practicable and the date, time and methods of any efforts to contact the discloser.

### **8.4. Suspicion of criminal offences and/or fraud**

- 8.4.1. If, in the course of the PID investigation, the principal officer suspects on reasonable grounds that information disclosed as part of a disclosure, or obtained during their investigation of a disclosure, is evidence of an offence against a Commonwealth, State or Territory law, they may disclose that information to a member of an Australian police force responsible for the investigation of the offence.<sup>41</sup>
- 8.4.2. Police notification is mandatory if the suspected offence is punishable by imprisonment for two years or more, unless the information relates to a corruption issue that has already been referred to the NACC (see Section 9 of these Procedures).<sup>42</sup>
- 8.4.3. Notification to police does not mean that the PID investigation should stop.<sup>43</sup>
- 8.4.4. Where the PID concerns alleged fraud that would usually be investigated in accordance with the ATSB's [\*Fraud Control and Corruption Policy and Plan\*](#), the recommend course of action would usually be to stop the PID investigation and refer the disclosure for investigation under another law or power (see Subsection 6.4 of these Procedures).

### **8.5. The PID investigation report**

- 8.5.1. Once the investigation is completed, the principal officer (or their delegate) will prepare a report of the investigation.
- 8.5.2. The investigation report must be completed within 90 days from:<sup>44</sup>

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<sup>39</sup> PID Act, s 50(1)(a).

<sup>40</sup> PID Act, s 50(4).

<sup>41</sup> PID Act, s 56(2).

<sup>42</sup> PID Act, ss 56(3), (4)(a) and (4)(b).

<sup>43</sup> Further guidance on continuing the PID investigation after police notification is found in section 7.3.6 of [Chapter 7](#) of the Ombudsman's Agency Guide.

<sup>44</sup> PID Act, s 52.

- (a) the initial allocation or reallocation of the disclosure to the ATSB;
- (b) in the case of a re-investigation, the day on which the principal officer decides to reinvestigate the disclosure; or
- (c) to the extent that a stop action direction under the NACC Act prevented the investigation, the day on which the principal officer becomes aware that a stop direction under the NACC Act which prevented the investigation no longer applies.

8.5.3. Requests for an extension of time must be submitted to the Ombudsman at least 10 business days prior to the expiry of the investigation completion date – see Subsection 5.3.2 of these Procedures. If the period is extended, the principal officer will inform the discloser of the progress of the investigation.

***Content of the report***

8.5.4. The report must set out:<sup>45</sup>

- (a) the matters considered in the course of the investigation, including the disclosable conduct alleged by the discloser and any other possible disclosable conduct subsequently identified;
- (b) the duration of the investigation;
- (c) an explanation of the steps taken to gather evidence;
- (d) a summary of the evidence and how the evidence informed the findings;
- (e) the principal officer’s findings (if any) including:
- (f) whether there have been one or more instances of disclosable conduct established and, if so, what type/s; and
- (i) the laws, rules, procedures, etc to which the disclosable conduct relates;
- (g) the action (if any) that has been, is being, or is recommended to be, taken to address those findings;<sup>46</sup>
- (h) any claims of any reprisal action taken against the discloser, or any other person, that relates to the matters considered in the course of the investigation, together with any related evidence; and
- (i) the ATSB’s response to any claims or evidence relating to reprisals.

8.5.5. Any finding of fact in the report must be based on relevant evidence, sufficient to satisfy the principal officer on the balance of probabilities.

8.5.6. If the investigation report contains recommendations, the principal officer should ensure that they provide the recommendations to a person within the ATSB who would be able to consider and address those recommendations.

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<sup>45</sup> See sections 47(2), 51(2) and 52 of the PID Act and section 13 of the PID Standard.

<sup>46</sup> The action to address the findings of the PID investigation could include a different type of investigation or referring the matter to the police.

## **8.6. Providing the report to the discloser and the Ombudsman**

- 8.6.1. A copy of the PID investigation report must be given to the discloser and to the Ombudsman (or the IGIS, for intelligence-related PIDs) within a reasonable time of preparing it.<sup>47</sup> Notification to the Ombudsman must be done using *Form 5 - Notification of a finalised PID investigation*.<sup>48</sup>
- 8.6.2. However, section 51(5) of the PID Act allows the principal officer (or their delegate) to delete from the copy of the report given to the discloser any material:
- (a) that is likely to enable the identification of the discloser to another person; or
  - (b) whose inclusion would result in the copy being a document;
  - (c) that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982*;
  - (d) having, or requiring, a national security or other protective security classification;
  - (e) containing intelligence information; or
  - (f) contravene a designated publication restriction.<sup>49</sup>
- 8.6.3. Section 51(6) of the PID Act permits the principal officer to delete from the copy of the report given to the Ombudsman any material:
- (a) that is likely to enable the identification of the discloser or another person; or
  - (b) the inclusion of which would contravene a designated publication restriction.
- 8.6.4. The Ombudsman (or the IGIS) may choose to review the ATSB's handling of the disclosure and obtain information or documents and make such enquiries as it thinks fit.<sup>50</sup> They may also make recommendations to the principal officer. For more information about the Ombudsman's powers in this respect see section 9.1.6 of [Chapter 9](#) of the Ombudsman's Agency Guide.

## **9. The National Anti-Corruption Commission (NACC)**

### **9.1. Interaction between PIDs and the NACC**

- 9.1.1. The NACC Act establishes the National Anti-Corruption Commission (NACC), which has operated since 1 July 2023.
- 9.1.2. This section sets out new obligations imposed on authorised officers (including principal officers and their delegates) that are exercising powers or functions under the PID Act.

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<sup>47</sup> PID Act, s 51.

<sup>48</sup> Available on the Ombudsman's [Tools and Resources page](#).

<sup>49</sup> A 'designated publication restriction' is defined in section 8 of the PID Act. It refers to a number of restrictions which usually relate to protecting the identity of people, such as certain orders made under the Family Law Act 1975 (Cth) or the Migration Act 1958 (Cth). See section 8 for the full list of relevant restrictions.

<sup>50</sup> PID Act, ss 55(3) and (4).

## 9.2. Mandatory referral to the NACC

9.2.1. From 1 July 2023, in considering a disclosure, an authorised officer who is:

(a) allocating an internal disclosure under Division 1 of Part 3 of the PID Act (i.e. an authorised officer); or

(b) investigating an internal disclosure under Division 2 of Part 3 of the PID Act, must consider whether the NACC Act mandatory referral obligation applies. This mandatory obligation applies from 29 July 2023 to any disclosure made from 1 July 2023.

9.2.2. To do this, the authorised officer must consider if:

(a) the internal disclosure raises a ‘corruption issue’ under the NACC Act;<sup>51</sup>

(b) the corruption issue concerns the conduct of a person who is or was an ATSB staff member while that person is or was an ATSB staff member; and

(c) the authorised officer suspects the issue could involve serious or systemic corrupt conduct.<sup>52</sup>

9.2.3. If the criteria in Subsection 9.2.2 above are met, the authorised officer must refer the corruption issue to the NACC as soon as reasonably practicable after becoming aware of it,<sup>53</sup> unless they believe on reasonable grounds that the NACC is already aware of the issue.

9.2.4. Where a referral is made to the NACC, section 39 of the NACC Act provides that the ATSB should continue to handle the disclosure unless a stop action direction is issued under section 43(1) of the NACC Act.

9.2.5. Further guidance is available in section 10.3 of [Chapter 10](#) of the Ombudsman’s Agency Guide and in the fact sheet [Interactions between NACC and PID](#).

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<sup>51</sup> A corruption issue is an issue of whether a person has engaged, is engaging in, or will engage in corrupt conduct: NACC Act, s 9.

<sup>52</sup> Section 8(1) of the NACC Act defines corruption conduct to include the following:

(a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly:

(i) the honest or impartial exercise of any public official’s powers as a public official; or

(ii) the honest or impartial performance of any public official’s functions or duties as a public official;

(b) any conduct of a public official that constitutes or involves a breach of public trust;

(c) any conduct of a public official that constitutes, involves or is engaged in for the purpose of abuse of the person’s office as a public official;

(d) any conduct of a public official, or former public official, that constitutes or involves the misuse of information or documents acquired in the person’s capacity as a public official.

Section 8 of the NACC Act provides further information on what does and does not constitute corrupt conduct.

<sup>53</sup> NACC Act, ss 35(1) and (2).

### 9.3. Stop action directions under the NACC Act

- 9.3.1. The NACC may direct the ATSB to stop taking specified action in relation to a corruption issue concerning the ATSB – including to stop investigating a PID – by issuing a stop action direction.<sup>54</sup>
- 9.3.2. Notwithstanding that a stop action direction has been issued, certain time-sensitive actions – such as actions to protect a person’s life – may be taken by the ATSB. The specific circumstances that warrant this and information on notification requirements are set out in section 44 of the NACC Act.

#### Stop action direction that prevents of the allocation of a PID

- 9.3.3. If a stop action direction is issued by the NACC which prevents the ATSB from allocating a PID, the authorised officer:
- (a) *must*, within 10 business days, give written notice to the Ombudsman<sup>55</sup> of the stop action. Such notice must contain certain information<sup>56</sup> and be made using the Ombudsman’s *Form 6 – Notification of a Stop Action*;<sup>57</sup> and
  - (b) *may* notify the discloser that they cannot investigate or further investigate the disclosure because of a stop action direction under the NACC Act.<sup>58</sup>
- 9.3.4. If a stop action direction prevents the allocation of a PID, a written record must be kept of the details of the direction, including when the direction was made and when the stop action direction no longer applies.<sup>59</sup> The written record must also indicate whether the principal officer of the relevant agency considers that it is reasonably practicable or appropriate for the discloser to be given a copy of the notice.

#### Stop action direction that prevents the investigation or further investigation of a PID

- 9.3.5. If a stop action direction is issued by the NACC which prevents the ATSB from investigating or further investigating a PID, the principal officer must:
- (a) within 10 business days, give written notice to the Ombudsman<sup>60</sup> of the stop action using the Ombudsman’s *Form 6 – Notification of a Stop Action*;<sup>61</sup> and

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<sup>54</sup> NACC Act, s 43.

<sup>55</sup> Or to the to IGIS if the disclosure concerns conduct relating to an intelligence agency, IGIS, ACIC or AFP in relation to their intelligence functions: PID Act, s 44B.

<sup>56</sup> This notice must include the information that was disclosed to the authorised officer, the conduct disclosed, the discloser’s name and contact details *if* they are known to the authorised officer and the discloser consents to them being shared with the Ombudsman/IGIS, and the stop action direction under the NACC Act that prevents allocation of some or all of the disclosure: PID Act, s 44B.

<sup>57</sup> Available on the Ombudsman’s [Tools and Resources page](#).

<sup>58</sup> PID Act, s 50(1)(c).

<sup>59</sup> PID Standard, standard 6, item 3.

<sup>60</sup> Or to the to IGIS if the disclosure concerns conduct relating to an intelligence agency, IGIS, ACIC or AFP in relation to their intelligence functions: PID Act, s 50A(4).

<sup>61</sup> Available on the Ombudsman’s [Tools and Resources page](#).



(b) notify the discloser that they cannot investigate or further investigate the disclosure because of a stop action direction under the NACC Act.<sup>62</sup>

9.3.6. Further guidance on stop action directions is available in section 10.5 of [Chapter 10](#) of the Ombudsman's Agency Guide.

#### **9.4. Informing the NACC**

9.4.1. In making a mandatory referral to the NACC, the authorised officer must include the following information:

- (a) all information relevant to the corruption issue in their possession or control when they make the referral. This could include:
- (b) the names of any public officials who the authorised officer suspects has engaged in serious or systemic conduct;
- (c) the names of any private individual or entities involved;
- (d) a description of the conduct;
- (e) the dates and timeframes of when the alleged corrupt conduct occurred or may occur;
- (f) how and when the authorised officer became aware of the issue;
- (g) any supporting documents or evidence; and
- (h) any other relevant information; and
- (i) the reason/s why they suspect the issue could involve corrupt conduct that is serious or systemic.

9.4.2. If the authorised officer becomes aware of new information after making the referral, they must provide it to the NACC as soon as reasonably practical.

#### **9.5. Exceptions to the NACC notification requirements**

9.5.1. The authorised officer is not required to provide information to the NACC about a corruption issue if any of the following apply:

- (a) the information is subject to an exempt secrecy provision;<sup>63</sup>
- (b) they believe on reasonable grounds that the NACC is already aware of the issue;<sup>64</sup>  
or
- (c) the NACC Commissioner has made a determination which provides that referral is not required because of the kind of corruption issue involved or the circumstances in which it arises.<sup>65</sup>

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<sup>62</sup> PID Act, s 50(1)(c).

<sup>63</sup> NACC Act, s 36.

<sup>64</sup> NACC Act, s 37(1)(a).

<sup>65</sup> NACC Act, s 37(1)(b).

## **9.6. Notifying the discloser**

- 9.6.1. If the authorised officer became aware of the corruption issue as a result of an internal PID, the authorised officer must as soon as reasonably practicable notify the discloser of their referral of the issue to the NACC.<sup>66</sup>

## **10. Other disclosures**

### **10.1. Overview**

- 10.1.1. In limited circumstances, a public official may disclose such information to a person outside government under section 26 of the PID Act, as either an external disclosure, emergency disclosure or a legal practitioner disclosure.
- 10.1.2. A disclosure of this kind must comply with the conditions set out in section 26 of the PID Act, summarised below, or the protections available to disclosers under the PID Act will not apply and the public official may open themselves to civil, criminal or disciplinary proceedings.

### **10.2. External disclosures**

- 10.2.1. Where a public official has already made an internal disclosure under the PID Act, they may in some circumstances make a subsequent disclosure to any person, except a foreign public official, if:<sup>67</sup>
- (a) the final report of the internal PID investigation has not been prepared within 90 days of allocation, or the extended investigation period approved by the Ombudsman or the IGIS;<sup>68</sup>
  - (b) the PID investigation has been completed and the discloser believes on reasonable grounds that the investigation was inadequate; or
  - (c) an investigation has been completed (whether the investigation was conducted under the PID Act or under other legislation) and the discloser believes on reasonable grounds that the response to the investigation was inadequate.
- 10.2.2. The following restrictions apply in addition to those described in Subsection 10.2.1 above:<sup>69</sup>
- (a) the public official must not disclose more information than is reasonably necessary to identify the wrongdoing;
  - (b) all of the externally disclosed information must have been the subject of at least part of a prior internal disclosure;
  - (c) on balance, making the external disclosure must not be contrary to the public interest; and

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<sup>66</sup> NACC Act, s 35(5).

<sup>67</sup> PID Act, s 26(1), Item 2.

<sup>68</sup> This condition does not apply to Ombudsman/IGIS investigations under their respective legislation.

<sup>69</sup> PID Act, s 26(1), Item 2, Column 3.

(d) the information does not consist of or contain intelligence information and it does not concern conduct related to an intelligence agency.

10.2.3. This avenue of external disclosure does not apply if the ATSB decides not to allocate or investigate the official's disclosure. In this case, the public official may complain to the Ombudsman about the ATSB's decision not to allocate or investigate their disclosure.

### **10.3. Emergency disclosures**

10.3.1. If a public official believes on reasonable grounds that the information they have involves a substantial and imminent danger to the health or safety of one or more people or to the environment, they may make an emergency disclosure to any person (except a foreign public official) provided they meet the following requirements:<sup>70</sup>

(a) the extent of the information they disclose must be only what is necessary to alert the recipient of the substantial and imminent danger; and

(b) if they have not previously made an internal disclosure about the matter, or if they have done so and the investigation is not yet completed, there must be exceptional circumstances justifying their decision to make an external disclosure. This might include, for example, if the investigation was taking too long to complete having regard to the risk to a person's health and safety.

10.3.2. An emergency disclosure must not include intelligence information, including sensitive law enforcement information.

### **10.4. Legal practitioner disclosures**

10.4.1. A public official may also disclose information to an Australian legal practitioner<sup>71</sup> for the purposes of seeking legal advice or professional assistance in relation to an actual or proposed disclosure (including an internal disclosure, an emergency disclosure or an external disclosure).

10.4.2. The public official must not disclose intelligence information. If the discloser knows or ought reasonably to have known that the information has a security classification, they must only disclose it if the recipient holds the appropriate level of security clearance.<sup>72</sup>

## **11. Support for public officials in the PID process**

11.1.1. The protections and immunities described in this Section 11 apply to a disclosure that is made in accordance with the PID Act, i.e. internal, external, emergency, legal practitioner and NACC disclosures. This includes where the discloser's report of wrongdoing turns out to be incorrect or cannot be substantiated (provided they reasonably believed the information tended to show disclosable conduct).

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<sup>70</sup> PID Act, s 26(1), Item 3, Column 3.

<sup>71</sup> Being an Australian lawyer admitted to the legal profession by a Supreme Court of an Australian State or Territory and who holds a practicing certificate under a law of an Australian State or Territory: PID Act, s 8.

<sup>72</sup> PID Act, s 26(1), Item 4, Column 3.

11.1.2. Support for ATSB employees who are the subject of a PID is addressed in Section 12 of these Procedures.

## **11.2. Protection for disclosers**

11.2.1. Regardless of the outcome of the risk assessment (see Subsection 7.2 of these Procedures), 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. More information can be found in section 4.3 of [Chapter 4](#) of the Ombudsman's Agency Guide.

### ***Protection of their identity***

11.2.2. The identity of a person who makes a disclosure will be kept confidential as far as practicable (see Subsections 13.1 and 13.2 of these Procedures). It is an offence to provide identifying information about a person who makes a PID unless an exception applies.<sup>73</sup> Measures that can be taken to protect the discloser's identity are discussed further in section 8.2.1 of [Chapter 8](#) of the Ombudsman's Agency Guide.

### ***Immunity from civil, criminal or administrative liability***

11.2.3. The discloser also has immunity from civil, criminal and administrative liability (including disciplinary action) for making the disclosure.<sup>74</sup> However, if the person discloses the same information elsewhere or outside the context of making a PID, those disclosures are not protected by the PID Act.

11.2.4. These immunities do not apply to the extent that the discloser:

- (a) knowingly makes a statement that is false or misleading;<sup>75</sup>
- (b) knowingly provides false or misleading information, or dishonestly produces forged or altered documents;<sup>76</sup> or
- (c) makes a disclosure knowing that it contravenes a designated publication restriction and without a reasonable excuse for doing so.<sup>77</sup>

11.2.5. A public official making a PID or other disclosure is not entitled to protection from the consequences of their own wrongdoing. A discloser may still be reasonably managed or disciplined for any unsatisfactory performance or disclosable conduct on their part<sup>78</sup> provided it is not done because they made, or provided assistance in relation to, a PID.

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<sup>73</sup> PID Act, s 20.

<sup>74</sup> PID Act, s 10(1)(a).

<sup>75</sup> PID Act, s 11(1).

<sup>76</sup> PID Act, s 11(2).

<sup>77</sup> PID Act, s 11A.

<sup>78</sup> PID Act, s 12.

### **11.3. Protection for witnesses in a PID investigation**

11.3.1. The PID Act protects people who provide assistance in relation to a PID in the same way that it protects disclosers. This includes immunity from liability for providing information as long as the information meets the criteria in section 12A of the PID Act.

11.3.2. This immunity does not apply:

- (a) if the witness knowingly makes a false or misleading statement;<sup>79</sup>
- (b) if the witness contravenes a designated publication restriction;<sup>80</sup> or
- (c) where information is about the witness' own conduct, in respect of that conduct.<sup>81</sup>

11.3.3. This immunity also does not apply to assistance that is not, on reasonable grounds, relevant to the making of a PID allocation decision, a disclosure investigation or proposed disclosure investigation, or an Ombudsman or IGIS review about a disclosure's handling. If a witness wishes to disclose such unrelated information, they should do it to an authorised officer who will then assess it under the PID Act.

### **11.4. Protection for officials exercising powers or performing functions under the PID Act**

11.4.1. The PID Act provides that the following persons are not liable to any criminal or civil proceedings or any disciplinary action for acting in good faith in the exercise of functions and powers under the PID Act:<sup>82</sup>

- (a) a principal officer or their delegate;
- (b) an authorised officer;
- (c) a supervisor of a discloser; or
- (d) a person assisting a principal officer or their delegate in good faith in the performance of their PID Act functions or powers.

11.4.2. The above immunity does not apply where the person contravenes a designated publication restriction.<sup>83</sup>

### **11.5. Protection from detriment and reprisal**

11.5.1. The principal officer must take reasonable steps to protect ATSB public officials against reprisals that have been, or may be, taken in relation to PIDs that have been, may have been, are proposed to be, or could be, made to an authorised officer or supervisor.

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<sup>79</sup> PID Act, s 12B(2).

<sup>80</sup> PID Act, s 12B(4).

<sup>81</sup> PID Act, s 12B(5).

<sup>82</sup> PID Act, s 78(1).

<sup>83</sup> PID Act, s 78(2).

- 11.5.2. A ‘reprisal’ is where someone by act or omission causes any detriment to another person because they believe or suspect that person, or anyone else, has made, may have made, proposes to make, or could make a PID.<sup>84</sup> A reprisal includes a threat to take a reprisal.
- 11.5.3. A reprisal does not include an administrative action that is reasonable to protect the discloser from detriment (provided there is no perception that the discloser is being punished).<sup>85</sup>
- 11.5.4. A ‘detriment’ includes, but is not limited to, the following:<sup>86</sup>
- (a) dismissal of an employee;
  - (b) injury of an employee in his or her employment;
  - (c) alteration of an employee’s position to his or her disadvantage;
  - (d) discrimination between an employee and other employees of the same employer;
  - (e) harassment or intimidation of a person;
  - (f) harm or injury to a person, including psychological harm;
  - (g) damage to a person’s property;
  - (h) damage to a person’s reputation;
  - (i) damage to a person’s business or financial position; and
  - (j) any other damage to a person.
- 11.5.5. The PID Act seeks to protect any person from reprisal through the following mechanisms:
- (a) it is a criminal offence for anyone to cause, or threaten to cause, detriment to a person because it is suspected or believed that they have made, may have made, propose to make or could make a PID;
  - (b) a person who believes they are suffering or have been threatened with reprisal has the right to apply to court for an injunction to stop or prevent it;
  - (c) a person has the right to apply for compensation for loss, damage or injury suffered from a reprisal; and
  - (d) an agency may be open to a claim for damages if it cannot show it took reasonable steps to prevent a reprisal.
- 11.5.6. More information on these mechanisms can be found in sections 8.7 and 8.8 of [Chapter 8](#) of the Ombudsman’s Agency Guide.

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<sup>84</sup> PID Act, s 13(1).

<sup>85</sup> PID Act, s 13(3).

<sup>86</sup> PID Act, s 13(2).

## 11.6. Supporting and protecting disclosers and witnesses

11.6.1. ATSB staff should actively support disclosers and witnesses throughout, and after, the PID process. This includes:

- (a) acknowledging the discloser for having come forward with the report of wrongdoing;
- (b) informing the person about the available support options;
- (c) advising the person of their rights and obligations under the PID Act and about the ATSB's investigation procedures, including the person's right to procedural fairness;
- (d) advising the person that they should seek their own independent legal advice on the impact of the PID Act and their rights and responsibilities (see Subsection 10.4 of these Procedures for more detail);<sup>87</sup>
- (e) informing the person of the progress of the investigation;
- (f) ensuring that their identity is kept confidential as far as reasonably practicable; and
- (g) advising the person that the principal officer and authorised officers are required to take reasonable steps to protect them from reprisal.

11.6.2. The ATSB will take reasonable steps to protect disclosers and witnesses from detriment or threats of detriment relating to the disclosure, both during and after the treatment of the disclosure.

11.6.3. Such steps may include, as reasonable and appropriate to the circumstances:

- (a) appointing a support person to assist the discloser, who is responsible for checking on the wellbeing of the discloser;<sup>88</sup>
- (b) providing the discloser with a copy of the ATSB's [Workplace Bullying and Harassment Employment Procedure](#);
- (c) advising the discloser about the availability of the [Employee Assistance Program](#); 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;
- (d) transferring the discloser or witness to a different area within the workplace or approving remote/teleworking (with the persons' consent).<sup>89</sup>

11.6.4. Further guidance on protection for whistleblowers is provided in section 10.6 of [Chapter 10](#) of the Ombudsman's Agency Guide.

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<sup>87</sup> Further guidance on disclosures to Australian legal practitioners can be found in section 2.7.8 of [Chapter 2](#) and section 8.6.2 of [Chapter 8](#) of the Ombudsman's Agency Guide.

<sup>88</sup> Noting that they can discuss the general situation but not disclose information to that support person that would identify those alleged to have committed wrongdoing or disclose other information that they are required to keep confidential.

<sup>89</sup> This step only likely to be appropriate in cases of very major or extreme risk.

## **12. Employees who are the subject of a PID**

### **12.1. Rights and obligations of employees who are the subject of a PID**

12.1.1. An ATSB employee who is the subject of a disclosure will be:

- (a) given support in accordance with Subsection 12.2 of these Procedures;
- (b) be able to seek assistance from the Ombudsman in relation to the PID Act's operation; and
- (c) afforded procedural fairness.

12.1.2. More information on the involvement of the person who is the subject of the disclosure can be found at section 7.3.3.9 of [Chapter 7](#) of the Ombudsman's Agency Guide.

12.1.3. An employee who is the subject of a disclosure must:

- (a) use their best endeavours to assist the principal officer in the conduct of an investigation;
- (b) use their best endeavours to assist the Ombudsman or IGIS in the performance of their functions under the PID Act;
- (c) comply with action taken by the ATSB to address risks or concerns in relation to the PID;
- (d) be aware that:
- (e) the ATSB may decide to take action in relation to the employee, such as temporarily transferring them to another work area without the employee's consent, in order to meet its PID Act and work health and safety obligations; and
- (f) be aware that the PID investigation outcome may result in another, different investigation taking place such as in relation to the [ATSB Code of Conduct Employment Procedure](#).

### **12.2. Supporting an employee who is the subject of a PID**

12.2.1. The ATSB will also take reasonable steps to support any employee who is the subject of a PID. This may include:

- (a) advising the employee of their rights and obligations under the PID Act and these Procedures, including the employee's right to procedural fairness;
- (b) advising the employee about the availability of the ATSB's [Employee Assistance Program](#);
- (c) ensuring that the employee's identity is kept confidential as far as reasonably practicable;
- (d) if there are concerns about the health and wellbeing of the employee, liaising with the ATSB's Head of Human Resources;



- (e) moving the employee to a different area within the workplace or approving remote/teleworking (with their consent);<sup>90</sup> or
- (f) advising the employee that it is open to them to seek their own independent legal advice in relation to their rights and responsibilities under the PID Act.

### **13. Confidentiality and authorised information sharing**

#### **13.1. Confidentiality**

- 13.1.1. The authorised officer and the principal officer will take all reasonable steps to protect the identity of a public official who has made a PID from the time of disclosure.
- 13.1.2. Only individuals directly involved in dealing with the PID may be advised of the details of the PID. These individuals must not disclose the identity of the discloser or any information which is likely to reveal the identity of the discloser without the consent of the discloser.
- 13.1.3. It is an offence for a public official to disclose information that is likely to enable the identification of a person as a person who has made a PID, other than in accordance with the PID Act.
- 13.1.4. Similarly, if a person discloses information to another person or uses information otherwise than in accordance with the PID Act, the person may commit an offence if the information was obtained by the person in the course of conducting a disclosure investigation, or in connection with the performance of a function or the exercise of a power by the person under the PID Act.
- 13.1.5. Identifying information about a discloser will not be disclosed to a court or tribunal except where necessary to give effect to the PID Act.
- 13.1.6. ATSB staff are also bound by obligations under the *Privacy Act 1988* (Cth) in relation to storing personal information securely and limiting its use and disclosure.

#### **13.2. Practical steps to protect confidentiality**

- 13.2.1. Any email correspondence between supervisors, authorised officers and the principal officer or their 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.
- 13.2.2. Any interviews conducted by an authorised officer, principal officer or delegate should be conducted in private and be arranged so as to avoid the identification of the discloser by other staff.
- 13.2.3. Supervisors and authorised officers who seek further advice from the Legal Services Unit regarding a disclosure should consider de-identifying the information where

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<sup>90</sup> This step is only likely to be appropriate in cases of very major or extreme risk.

practicable. When referring to involved parties they should be referred to as the ‘discloser’ and the ‘subject person’.

### 13.3. Authorised information sharing between agencies

13.3.1. Section 65 of the PID Act expressly permits (but does not *require*) information sharing between agencies in the following situations:

Agency sharing the information	Agency that can receive information
An investigative agency (i.e., the Ombudsman or the IGIS).	<ul style="list-style-type: none"> <li>• Another investigative agency.</li> <li>• The portfolio department of the agency to which the conduct relates.</li> <li>• The agency to which the conduct.</li> </ul>
If the disclosure is allocated within an agency’s portfolio under section 43(8), the agency to which the disclosure is allocated.	The agency to which the conduct relates
If the disclosure is allocated within an agency’s portfolio under section 43(8), the agency to which the conduct relates.	The agency to which the disclosure is allocated.

13.3.2. Note that section 65 does not permit the sharing of the discloser’s name and contact details if the discloser does not consent to these details being shared.

13.3.3. The agency sharing the information or documents may redact any material from what it provides to another agency, if the sharing agency considers it appropriate to do so.

13.3.4. Agencies may also share information in other circumstances permitted by the PID Act, provided they abide by secrecy provisions in the PID Act and in other laws.

13.3.5. More detailed guidance on authorised information sharing can be found in section 8.1.2. of [Chapter 8](#) of the Ombudsman’s Agency Guide.

### 13.4. Records management

13.4.1. Documentation must be kept in relation to all PIDs received or handled by the ATSB. All records relating to PIDs must be kept in accordance with the [General Records Authority 39 2016/00471400](#). This authority sets out the manner in which records relating to PIDs must be kept, and the length of time for which they must be kept.

13.4.2. Where the principal officer or 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 principal officer, authorised officers, delegates or other ATSB employees 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* (Cth) or the *Public Service Act 1999* (Cth)).

- 13.4.3. Where a form is required to be sent under these Procedures, a copy of the form must be kept.
- 13.4.4. 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.
- 13.4.5. Any email messages sent by supervisors, principal officers, authorised officers or Delegates that contain identifying information must be clearly marked ‘**For Addressee Eyes Only – Public Interest Disclosure**’.
- 13.4.6. When a person ceases their role as a principal officer or authorised officer in the ATSB (including because of resignation or movement to another agency), they must transfer all their PID records to another principal officer or authorised officer as the case may be.
- 13.4.7. For further guidance, refer to the ATSB’s [Records and Information Management Policy](#).

## 14. Reports to the Ombudsman

- 14.1.1. The principal officer must give the Ombudsman information and assistance for the completion of the Ombudsman’s annual and six-monthly reports under sections 76 and 76A of the PID Act.<sup>91</sup>
- 14.1.2. Each authorised officer must provide a six-monthly report to Manager, Legal Services specifying:
  - (a) the number of PIDs received by the authorised officer;
  - (b) the kinds of disclosable conduct for each PID (by reference to the relevant item or paragraph in the definition – see Subsection 3.1 of these Procedures);
  - (c) any disclosures that have been allocated to the ATSB by another agency’s authorised officer.
- 14.1.3. The principal officer (and any delegates who investigated PIDs) must advise Manager, Legal Services of:
  - (a) every decision made to investigate a disclosure during the financial year;
  - (b) the time taken to conduct those PID investigations;
  - (c) any actions taken in response to a recommendation made in an investigation report.

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<sup>91</sup> PID Act, s 76(3).

14.1.4. The Manager, Legal Services will collate the ATSB’s report to the Ombudsman on disclosures made during the financial year. Legal Services must prepare the ATSB’s report for the CEO’s consideration within the time specified by the CEO.

14.1.5. 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.

14.1.6. Section 76(4) of the PID Act allows the principal officer to delete a document given to the Ombudsman for the purpose of these reports any material:<sup>92</sup>

- (a) that is likely to enable the identification of a person who has made a PID or another person; or
- (b) the inclusion of which would:
- (c) result in the document being a document that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982*; or
- (d) result in the document being a document having, or being required to have, a national security or other protective security classification.

## 15. Review

15.1.1. These Procedures will be reviewed by Legal Services every three years or following a trigger event.

Date	Summary of Changes	Author	Approval	Approval date
August 2015	Establishment of document	Manager, Legal Services	CEO	August 2015
August 2024	Document redrafted following reform of the PID Act and introduction of the NACC	Manager, Legal Services	CEO	November 2024

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<sup>92</sup> PID Act, s 76(4).