

# AFP National Guideline on public interest disclosure

## 1. Disclosure and compliance

This document is classified **UNCLASSIFIED** and is intended for internal AFP use.

Disclosing any content must comply with Commonwealth law and the [AFP National Guideline on information management](#).

This instrument is part of the AFP's professional standards framework. The [AFP Commissioner's Order on Professional Standards \(CO2\)](#) outlines the conduct expected of AFP appointees. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the *Australian Federal Police Act 1979* (Cth) (AFP Act).

## 2. Guideline authority

This guideline was issued by National Manager Workforce Development & Culture using power under s. 37(1) of the *Australian Federal Police Act 1979* (Cth) as delegated by the Commissioner under s. 69C of the AFP Act.

## 3. Introduction

This guideline outlines the obligations and processes for public officials to make and respond to public interest disclosures under the [PID Act](#). AFP personnel should refer to the [PID Act](#) for more information on their rights and obligations in relation to public interest disclosures.

AFP appointees must also consider their obligations to report and manage misconduct as per [CO2](#) and the [AFP National Guideline on complaint management](#).

This instrument is also issued to give effect to s.59 of the [PID Act](#) which requires the Commissioner, as principal officer, to establish and facilitate procedures when dealing with public interest disclosures in relation to the AFP.

## 4. Policy on public interest disclosures (PIDs)

The purpose of the [PID Act](#) is to:

- promote the integrity and accountability of the Commonwealth public sector, including the AFP
- encourage and facilitate the making of PIDs by public officials
- ensure that public officials who make PIDs are supported and protected from detriment relating to the PID
- ensure that PIDs are properly investigated and dealt with.

## 5. Types of public interest disclosure

A PID is a disclosure of information made by a current or former public official, that must:

- relate to the public official's position as a public official
- not have been previously reported prior to 15 January 2014
- satisfy the public interest principles outlined in s.26 of the [PID Act](#)
- be assessed by an AFP Authorised Officer (AO) to determine the most appropriate agency for handling the PID, as per s.43 of the [PID Act](#).

There are four types of disclosures, including:

- internal disclosures
- external disclosures
- emergency disclosures
- legal practitioner disclosures.

## 5.1 Internal disclosure

In accordance with s.26(1) item 1 of the [PID Act](#), an internal disclosure must:

- identify one or more instances of disclosable conduct
- be reported to an authorised internal recipient or the discloser's immediate supervisor.

This is the most common type of disclosure made by a public official.

## 5.2 External disclosure

In accordance with s.26(1) item 2 of the [PID Act](#), an external disclosure may:

- identify disclosable conduct in the interest of the public
- ensure an internal disclosure under the [PID Act](#) has been made and the following occurred:
  - the internal disclosure investigation under the [PID Act](#) was not completed (meaning that the report of investigation was not prepared) within 90 days or within a time frame approved by the Ombudsman
  - the discloser believes on reasonable grounds that the internal disclosure investigation under the [PID Act](#) was inadequate
  - the discloser believes on reasonable grounds that the AFP took inadequate action after the internal disclosure investigation was completed (whether the disclosure investigation was conducted under the [PID Act](#) or under other legislation)
- not, on balance, be contrary to the public interest for an external disclosure to be made per s.26(1) item 2 of the [PID Act](#)
- not disclose more information than is reasonably necessary to identify the wrongdoing
- not contain intelligence information
- not relate to an intelligence agency
- be reported to any person other than a foreign public official.

Prior to making an external disclosure, AFP personnel should:

- seek legal advice regarding the provisions of the [PID Act](#) given the risks of breaching:
  - a secrecy law
  - confidentiality undertaking
  - Australian government security requirements
- comply with secrecy provisions under the [Australian Federal Police Regulations 2018](#) (Cth) if the disclosable information relates to a conduct issue under Part V of the [AFP Act](#).

An external disclosure that does not comply with paragraph 7.1(a) and/or 7.1(b) or the [PID Act](#):

- may be a breach of the secrecy provisions under s.60A of the [AFP Act](#) and/or s.70 of the [Crimes Act 1914](#) (Cth)
- must be investigated by PRS
- does not afford the discloser with the protections of the [PID Act](#).

## 5.3 Emergency disclosure

In accordance with s.26(1), item 3 of the [PID Act](#), for an emergency disclosure, the discloser must:

- believe on reasonable grounds that the information concerns a substantial and imminent danger to the health or safety of one or more persons or the environment
- not disclose more information than is reasonably necessary to identify the substantial and imminent danger
- ensure there are exceptional circumstances justifying the discloser's failure to make an internal disclosure of the information
- ensure if the PID is being investigated as an internal disclosure, there are exceptional circumstances justifying an emergency disclosure being made before the investigation is completed
- ensure the information does not contain intelligence information

- report the information to any person other than a foreign public official (as defined in Division 70 of the *Criminal Code Act 1995* (Cth)).

## 5.4 Legal practitioner disclosure

In accordance with s.26(1), item 4 of the [PID Act](#), a legal practitioner disclosure must:

- not contain intelligence information
- be for the purposes of obtaining legal advice or professional assistance in relation to the discloser having made or proposing to make a public interest disclosure
- ensure the recipient holds the appropriate level of security clearance required to review any classified information that may be part of the public interest disclosure
- be reported to an Australian legal practitioner.

## 6. Who can make a public interest disclosure (PID)

All current and former AFP personnel (being public officials) may make a PID per s.69 of the [PID Act](#), including:

- AFP appointees
- contracted service providers to the AFP
- AFP volunteers
- other persons deemed to be public officials for the purposes of s.70(1) of the [PID Act](#).

## 7. What can be disclosed

S.29 of the [PID Act](#) defines disclosable conduct, which includes:

- a contravention of a law of the Commonwealth, a State or a Territory
- a contravention of a law in a foreign country
- perverting or attempting to pervert, the course of justice
- corruption of any other kind
- maladministration
- an abuse of public trust
- scientific misconduct
- wastage of public money or public property
- a danger to the health or safety of one or more persons
- a danger to the environment
- an abuse of a person's position as a public official
- conduct engaged in by a public official that if proved, give reasonable grounds for disciplinary action.

S. 31, 32 and 33 of the [PID Act](#) outlines what is not considered disclosable conduct, which includes:

- s.31 – Disagreements with government policy
- s.32 – Conduct connected with courts or Commonwealth tribunals
- s.33 – Conduct connected with intelligence agencies.

## 8. How to make a public interest disclosure (PID)

A PID must be reported either orally or in writing to one of the following:

- an authorised internal recipient via either:
  - email: [PID@afp.gov.au](mailto:PID@afp.gov.au)
  - letter: Professional Standards, Australian Federal Police, GPO Box 401, Canberra ACT 2601
- a supervisor or a contract manager who must report the disclosure to an AO as soon as practicable in accordance with clause 60A of the [PID Act](#)

- the Ombudsman via email: [PID@ombudsman.gov.au](mailto:PID@ombudsman.gov.au).

A public official may:

- report a PID without asserting the disclosure is made for the purposes of the [PID Act](#)
- submit an anonymous PID per s.28(2) of the [PID Act](#). In these circumstances the discloser(s):
  - must provide sufficient information to support their status as a current or former public official
  - must acknowledge it may be difficult for the recipient of the PID to obtain further information from an anonymous discloser to progress the matter, or to update them on the progress of their PID
  - may reveal their identity at a later stage to seek protections of the [PID Act](#).

## 9. Protections afforded to the discloser

Part 2, Division 1 of the [PID Act](#) provides for protections of disclosers, and criminal offences associated with breaching the protections. This includes:

- immunity from civil, criminal and administrative liability, as outlined in part 2, Division 1, Subdivision A of the [PID Act](#)
- protection from a reprisal as outlined in part 2, Division 1, Subdivision B of the [PID Act](#)
- it is a criminal offence to take or threat to take a reprisal against a discloser, as per s.19 of the [PID Act](#). Section 9.2 of this guideline provides further information regarding reprisal
- the right to apply for compensation for loss, damage or an injury suffered from a person taking a reprisal against them, as per s.14 of the [PID Act](#)
- the right to apply to the Federal Court of Australia for:
  - an injunction, an apology, restraining, or any other order the court deems appropriate as outlined in s.15 of the [PID Act](#)
  - multiple orders under s.14, s.15, s.16 as outlined in s.17 of the [PID Act](#)
- protection from detriment – the principal officer must take reasonable steps to protect the discloser from detriment as per s.59(3) of the [PID Act](#)
- identity protection – it is a criminal offence to use or disclose identifying information of a discloser, as per s.20 of the [PID Act](#)
- confidentiality protection – for example, it is a criminal offence:
  - to disclose or use protected information, as per s.65(1) of the [PID Act](#)
  - for a legal practitioner to disclose or use information obtained under a legal practitioner disclosure, as per s.67(1) of the [PID Act](#).

Protections from any unlawful adverse action based on workplace rights are also afforded to the discloser under the [Fair Work Act 2009](#) (Cth).

Making a PID does not exclude the discloser from reasonable management action for any unsatisfactory performance or participation in misconduct, including unlawful conduct that forms part of a PID.

### 9.1 Support

The PID Act provides a means for protecting public officials, and former public officials, from adverse consequences of disclosing information that, in the public interest, should be disclosed (s 7(1)).

Supporting and protecting disclosers and other staff is an important agency responsibility that is key to successful implementation of the scheme. So too is maintaining an appropriate level of confidentiality.

AFP personnel seeking support may contact an AO regarding options available, including:

- [AFP Safe Place and Investigations](#)
- PRS Coordinators

- AFP Confidant Network, per BPG on the Confidant Network
- [AFP Psychological Services](#)
- [Benestar](#).

Consent must be sought from the discloser prior to providing their details to the relevant support area(s).

## 9.2 Reprisals

A reprisal may include an action or threat of an action that results in:

- a physical or psychological injury, including a stress-related injury
- intimidation, harassment or victimisation
- loss of, or damage to, property
- disadvantage to a person's career (for example, denying a reference or promotion for reporting a PID).

When a discloser believes a person is taking or has taken a reprisal against them, they must immediately notify one of the following:

- an AO
- their supervisor or contract manager
- the PID investigating officer.

Any allegation made against a person who takes or threatens to take a reprisal must also be reported as per [CO2](#) and the [AFP National Guideline on complaint management](#).

## 9.3 Risk assessment

An initial risk assessment must be completed as soon as possible by the supervisor, after a disclosure is received, or after the AFP is notified that a disclosure concerning their agency has been received so as to recognise any risk of reprisals or associated workplace conflict.

The [PID Act](#) requires the principal officer to establish procedures for assessing the risk of reprisal in relation to public interest disclosures. The risk assessment, amongst other things, will assist in:

- identifying if there are actual or potential reprisals or related workplace conflict issues
- assessing the likelihood and consequence of reprisals or related workplace conflict
- controlling what strategies should be put in place to prevent or contain reprisals or related workplace conflict
- monitoring and reviewing whether the strategies have been implemented and if they were effective.

Further information is available in the [Commonwealth Ombudsman Guide for Agencies to the Public Interest Disclosure Act 2013](#) (Commonwealth Ombudsman, April 2016).

# 10 Roles and responsibilities

The [PID Act](#) prescribes roles to perform various functions within set time frames, as follows:

## 10.1 Principal officer

As required by s.59 of the [PID Act](#), the Commissioner as principal officer of the AFP must:

- establish and facilitate procedures in accordance with the [PID Standard](#), including procedures to assess risks that reprisals may be taken against the persons who make the disclosures and providing for confidentiality of investigative processes
- appoint AOs in writing and ensure their identity is known by all public officials
- conduct risks assessments for reprisal against a discloser
- ensure public officials are protected from detriment or threats of detriment related to PIDs and provide support options available to disclosers
- ensure a discloser is given information about the principal officer's powers to decide to:

- not investigate the PID
- not investigate the disclosure further
- investigate the disclosure under a separate investigative power within the meaning given under s.49(2) of the [PID Act](#)
- ensure PIDs are properly investigated
- take appropriate action in response to an investigation report
- provide information to the Ombudsman in relation to the:
  - receipt of a PID
  - action taken and reasons for the decision to either investigate or exercise a discretion to not investigate
  - Ombudsman's annual report on the operation of the [PID Act](#).

Each of these responsibilities are delegated as per s.77(1) of the [PID Act](#) and located under the [Delegations and Authorisations Collection](#) listed on the AFP Hub.

## 10.2 Authorised officers (AOs)

Under the PID Act, an AO is appointed in writing by the principal officer or delegate.

Pursuant to s.36(b)(ii) of the [PID Act](#), all Coordinators in PRS have been appointed as AOs.

AFP personnel should refer to the [Delegations and Authorisations Collection](#) on the AFP Hub for more information.

AOs must:

- evaluate the PID to determine if it must be investigated under s.47 of the [PID Act](#) and assess the most appropriate avenue for investigation, including:
  - s.47(3) of the [PID Act](#) allows a matter to be considered for investigation under another law of the Commonwealth, which includes by:
    - AFP PRS or another AFP business area if the matter falls within Part V of the [AFP Act](#)
    - another Commonwealth agency
    - Work Health Safety and Rehabilitation, using the provisions of the [Work Health and Safety Act 2011](#) (Cth)
  - s.48 of the [PID Act](#) provides for a discretion to not investigate, based on the following:
    - the discloser is not, or has not been, a public official
    - the information is frivolous or vexatious
    - the information does not contain serious disclosable conduct
    - the PID is a duplicate, or substantially the same, as another PID which has been, or is being, investigated under the [PID Act](#)
    - the PID is the same, or substantially the same, as a PID already investigated or being investigated under another Commonwealth law, and either:
      - it is inappropriate to conduct another investigation at the same time
      - the principal officer is reasonably satisfied the matter does not warrant further investigation
    - the discloser has advised the principal officer they do not wish the investigation to be pursued, and the principal officer is reasonably satisfied that there are no matters that warrant further investigation
    - it is impracticable to investigate the PID because:
      - of the age of the information
      - the discloser has not revealed their name and contact details

- the discloser has failed, or is unable, to give the investigator the information or assistance they requested
- allocate PIDs, within 14 days of receipt, to the AFP or an appropriate agency including the referral of corruption to the Australian Commission for Law Enforcement Integrity (written records of PID allocations must be maintained as per s.6 of the [PID Standard](#))
- notify the principal officer of each agency to which the handling of the PID is allocated
- determine if the potential PID is an internal disclosure by assessing whether the:
  - conduct qualifies as disclosable conduct
  - discloser qualifies as a public official
- inform the discloser of their rights and obligations under the provisions of the [PID Act](#), including:
  - whether the PID will be treated as an internal disclosure for the purposes of the [PID Act](#)
  - the requirements for the PID to be considered as an internal disclosure outlined in s.26(1) of the PID Act
  - advising of any orders or directions, of which the AO is aware, that are designated publication restrictions that may affect disclosure of the information
  - if the PID is not allocated, inform the discloser and the Ombudsman of their decision, and the reasons for that decision, along with any other course of action available to the discloser under other laws of the Commonwealth
  - when the disclosure investigation is finalised and provide the discloser and the Ombudsman with a copy of the finalised disclosure investigation report (the report may be redacted, including deleting information that is likely to enable the identification of the discloser or another person)
  - per s.9 of the [PID Standard](#), provide information to the discloser within 14 days of the PID allocation about the principal officer's discretionary powers to not investigate
- maintain confidentiality of the discloser's details or seek the discloser's consent to detail information identifying them for the purposes of a disclosure investigation only
- assess the risks of other persons taking a reprisal against the discloser.

Section 60 of the PID Act articulates further obligations of AOs. These being if:

- an individual discloses, or proposes to disclose, information to an authorised officer of an agency
- 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 what this Act requires in order for the disclosure to be an internal disclosure

The AO must:

- inform the individual that the disclosure could be treated as an internal disclosure for the purposes of this Act
- and**
- explain what this Act requires in order for the disclosure to be an internal disclosure; and advise the individual of any orders or directions of which the authorised officer is aware that are designated publication restrictions that may affect disclosure of the information.

On taking receipt of a PID, the AO must complete a risk assessment as per the [AFP National Guideline on risk management](#). Where the matter has been referred to PRS for investigation under Part V of the [AFP Act](#), the:

- complaint time frames detailed in the [AFP National Guideline on complaint management](#) must apply
- protections of the discloser under the [PID Act](#) must continue.

### 10.3 PID investigators

PID investigators to whom investigative powers under the [PID Act](#) are delegated must be at the Band 4 level or above. AFP personnel should refer to the [Delegations and Authorisations Collection](#) on the AFP Hub for more information.

The disclosure investigation must be:

- conducted as per s.53 of the [PID Act](#)
- completed by the investigator within the prescribed 90 day statutory time frame, unless the Ombudsman affords an extension. This includes a written investigation report as required by s.13 of the [PID Act](#) returned to PRS to provide to the Ombudsman and the discloser.

### 10.4 Supervisors

All supervisors must:

- educate themselves on the [PID Act](#) requirements, in particular what constitutes disclosable conduct as per s.29 of the [PID Act](#)
- recognise disclosable conduct and report the information as per s.8 of this guideline
- ensure AFP personnel are supported and protected against reprisals
- where the information does not contain disclosable conduct, ensure the matter is managed according to the most relevant policy or guidelines.

### 10.5 All AFP personnel

Section 61(1) and s. 61(2) of the [PID Act](#) require all public officials to use their best endeavours to assist the principal officer and the Ombudsman in the conduct of a disclosure investigation. All AFP personnel must support public officials who they know have made PIDs and keep confidential the identity of a discloser and anyone against whom an allegation has been made.

Beyond those specific responsibilities, all AFP personnel must ensure the PID scheme works effectively in the AFP by:

- reporting matters where there is evidence that shows or tends to show disclosable conduct
- identifying areas where there may be opportunities for wrongdoing to occur because of inadequate systems or procedures, and proactively raising those with management.

## 11. Review of a public interest disclosure (PID)

Disclosers seeking a review of the outcome of an internal disclosure must refer the matter to the Manager Professional Standards (MPRS) via email to [PID@afp.gov.au](mailto:PID@afp.gov.au). MPRS must make a final decision based on the findings of the review and reply to the discloser in writing. A PID must only be reviewed once internally.

Disclosers seeking to raise a complaint in relation to the handling of a PID by an agency must refer the matter to the Ombudsman via email to [PID@ombudsman.gov.au](mailto:PID@ombudsman.gov.au).

## 12. Further advice INFORMATION PUBLICATION SCHEME (IPS)

Any queries about this guideline should be referred to MPRS.

## 13. References



## Legislation

- [Australian Federal Police Act 1979](#) (Cth)
- [Australian Federal Police Regulations 2018](#)(Cth)
- [Australian Federal Police Categories of Conduct Determination 2013](#)(Cth)
- [Crimes Act 1914](#) (Cth)
- [Fair Work Act 2009](#) (Cth)
- [Law Enforcement Integrity Commissioner Act 2006](#) (Cth)
- [Ombudsman Act 1976](#) (Cth)
- [Public Interest Disclosure Act 2013](#) (Cth)
- [Public Interest Disclosure Standard 2013](#)(Cth)
- [Work Health and Safety Act 2011](#) (Cth).

## AFP governance instruments

- [AFP Commissioner's Order on Professional Standards \(CO2\)](#)
- [AFP National Guideline on complaint management](#)
- [AFP National Guideline on information management](#)
- [AFP National Guideline on personnel security](#)
- [AFP National Guideline on risk management](#)
- [BPG on the Confidant Network.](#)

## Other sources

- [AFP Delegations and Authorisations Collection](#)
- [Commonwealth Ombudsman Guide for Agencies to the Public Interest Disclosure Act 2013](#) (Commonwealth Ombudsman, April 2016)
- [Making a disclosure - Information for agencies](#) (Commonwealth Ombudsman, 2017)
- [Making a disclosure - Information for disclosers](#) (Commonwealth Ombudsman, 2017)
- [AFP Legislation Program Operational Summary: \*Public Interest Disclosure Act 2013\*](#) (November 2013, AFP Hub).

## 14. Shortened forms

<b>AFP</b>	Australian Federal Police
<b>AO</b>	Authorised Officer
<b>PID</b>	Public Interest Disclosure
<b>PRS</b>	Professional Standards

## 15. Definitions

**AFP appointee** – means a Deputy Commissioner, an AFP employee, special member or special protective service officer and includes a person:

- engaged overseas under s.69A of the [AFP Act](#) to perform duties as an AFP employee
- seconded to the AFP under s.69D of the [AFP Act](#)
- engaged under s. 35 of the [AFP Act](#) as a consultant or contractor to perform services for the AFP and determined under s.35(2) of the [AFP Act](#) to be an AFP appointee

(See s. 4 of the [AFP Act](#).)

**AFP personnel** – includes:

- AFP appointees
- contracted service providers to the AFP
- AFP volunteers

- other persons who provide services to the AFP who are deemed a public official for the purposes of s.70(1) of the [PID Act](#).

**Authorised internal recipient** – is as defined under s.34 of the [PID Act](#) and includes:

- the principal officer
- authorised officers
- an authorised officer of the Commonwealth Ombudsman.

**Authorised officer (AO)** – is as defined under s.36 of the [PID Act](#) includes:

- the principal officer of the agency
- a public official who both:
  - belongs to the agency
  - is appointed, in writing, by the principal officer of the agency as an AO for the purposes of the [PID Act](#).

For the AFP, Professional Standards (PRS) Coordinators have been appointed in writing as AOs for the purpose of the [PID Act](#).

**Contract manager** – means an AFP employee identified as a manager in a contract for the provision of goods or services to the AFP.

**Principal officer** – means the Commissioner (pursuant to s.73(1), item 4 of the [PID Act](#) or duly authorised delegate (pursuant to s.77 of the [PID Act](#)).

**Public official** - is as defined under s.69 of the [PID Act](#), an individual that belongs to, or once belonged to, a Commonwealth agency.

**Sensitive law enforcement information** – is as defined under s.41(2) of the [PID Act](#), meaning information the disclosure of which is reasonably likely to prejudice Australia's law enforcement interests, including Australia's interests in:

- avoiding disruption to national and international law enforcement and criminal investigations
- protecting informants and witnesses
- protecting the technologies and methods used in dealing with criminal intelligence and investigation
- information related to an investigation as described in the [AFP National Guideline on complaint management](#).

**Supervisor** – means an AFP appointee or an AFP contract manager who supervises or manages a discloser.

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