



DVA PEOPLE POLICY PUBLIC INTEREST DISCLOSURE PROCEDURES

Table of Contents

Introduction	3
Reporting of disclosable conduct.....	3
What is disclosable conduct?	3
Legislation and Policies	4
The Disclosure Process.....	4
Making a disclosure under the PID Act	4
Procedures for Supervisors / Managers.....	6
Procedures for Authorised Officers	6
Authorised Officer must advise disclosers/potential disclosers about the PID Act.....	6
Authorised Officer must decide whether or not to allocate a disclosure	7
Where Authorised Officer allocates an internal disclosure	7
Where an Authorised Officer allocates an internal disclosure to another agency	7
Anonymous Disclosures	8
Deciding whether or not to Investigate	8
Decision to investigate	9
Procedures for Investigators.....	9
Interviewing witnesses	9
Procedural fairness	10
Time limits	11
Reports of Investigations	11
Confidentiality	12
Record-Keeping.....	12
Monitoring and Evaluation	13
Evaluation / Review	13

Version Control

Date of Change	Summary of changes	Reason	Approved by
5/2/2016	Included PID Act introduction and simplified sections	To improve readability	Karen Philpot
11/5/2016	Update list of Authorised Officers	Change in Authorised Officers	Karen Philpot
28/7/2016	Updated making a disclosure under the PID Act	Legal advice	Karen Philpot
10/2/2017	Updated links to Ombudsman's Agency Guide	New version released	Nick Gozzi
24/10/2017	Updated list of Authorised Officers	Change in Authorised Officers	Nick Gozzi
28/3/2018	Updated list of Authorised Officers	Change in Authorised Officers	Nick Gozzi
21/5/2018	Updated Principal Officer of DVA	New Secretary of DVA appointed	Nick Gozzi
24/7/2018	Change of Template	Change of Template	Nick Gozzi

Introduction

The *Public Interest Disclosure Act 2013* (PID Act) came into effect on 15 January 2014 and replaced the whistle-blower scheme formally defined in the *Public Service Act 1999*.

The PID Act provides for the disclosure, investigation, reporting and monitoring of wrongdoing in the APS. The PID Act offers public officials, such as DVA employees certain immunities from liability, and protections from reprisal, when they make a disclosure.

The PID Act is designed to provide public officials with assurance that if they make a public interest disclosure, it will be dealt with appropriately, and they will be given support and protection from reprisal in relation to their disclosure.

Reporting of disclosable conduct

DVA recognises its responsibilities to effectively manage disclosable conduct that is reported by DVA staff (and others) in accordance with the provisions of the *Public Interest Disclosure Act 2013* (PID Act). DVA will take active steps to support and to protect persons who make disclosures under the PID Act.

DVA recognises that it is important to have an effective system for reporting and investigating disclosable conduct. Some of the potential benefits of such a system are reducing the work health and safety risks to our workers, saving money and making our programs and processes more efficient. Another potential benefit is increasing the confidence of our staff in the way DVA is managed.

DVA will seek to manage its responsibilities under the PID Act in accordance with the requirements of this Act and in the interests of disclosers and DVA.

What is disclosable conduct?

The full definition of disclosable conduct is set out in section 29 of the PID Act. That definition applies for the purposes of these procedures.

In summary, disclosable conduct is conduct by an agency or by a public official that:

- a) contravenes a law of the Commonwealth, a State or a Territory, or
- b) occurs in a foreign country and contravenes a law in force in that country that applies to the agency or public official and that corresponds to a law in force in the Australian Capital Territory, or
- c) perverts, or attempts to pervert, the course of justice or involves corruption of any other kind, or
- d) constitutes maladministration, including conduct that:
 - a. is based on improper motives
 - b. is unreasonable, unjust or oppressive, or
 - c. is negligent, or
- e) is an abuse of public trust, or
- f) is fabrication, falsification, or deception in relation to scientific research, or misconduct in relation to scientific work, or
- g) results in the wastage of public money or public property or of the money or property of an authority covered by the PID Act, or

- h) unreasonably results in a danger to the health and safety of a person or unreasonably results in or increases the risk of a danger to the health and safety of a person, or
- i) results in a danger to the environment or results in or increases the risk of a danger to the environment, or
- j) is prescribed by the PID Rules, or
- k) is engaged in by a public official that:
 - a. involves abuse of the public official's position, or
 - b. could, if proved, give reasonable grounds for disciplinary action against the public official.

It does not matter whether the disclosable conduct occurred before or after the PID Act came into operation (15 January 2014) or whether the person who is alleged to have carried out the conduct has ceased to be a public official.

Legislation and Policies

- *Public Interest Disclosure Act 2013*
- *Public Interest Disclosure Standard 2013*
- *Public Service Act 1999*
- *Public Service Regulations 1999*
- *Fair Work Act 2009*
- *Freedom of Information Act 1982*
- *Work Health and Safety Act 2011*
- *Public Governance, Performance and Accountability Act 2013*
- DVA People Policy – Conduct
- DVA Procedures for dealing with Suspected Breaches of the Code of Conduct

The Disclosure Process

Making a disclosure under the PID Act

The following people are entitled to make a disclosure under the PID Act:

- All APS employees in DVA and former APS employees of DVA.
- All contracted service providers and their employees who provide, or who provided, services to DVA under a contract of the Commonwealth
- All public officials and former public officials.

In very broad terms, a public official is/was employed by the Commonwealth or a Commonwealth body, or a person who provides services to the Commonwealth or a Commonwealth body under a contract.

A public interest disclosure may be made anonymously and can be made orally or in writing.

A public interest disclosure cannot be made through an agent/representative of a public official; either on the public official's behalf or on the public official's instructions.

Where a public official makes a public interest disclosure, they do not have to specifically state or intend that they are providing information in accordance with the PID Act.

DVA employees may make a disclosure to their Supervisor/Manager or an Authorised Officer (AO), or in certain circumstances to the Ombudsman.

The following people have been appointed as AO's in DVA:

- Liz Cosson, Secretary
- Veronica Hancock
- Peter King
- Neil Bayles
- Janice Silby.

If a person is considering making a public interest disclosure, it is recommended that they contact one of DVA's AO's to obtain information.

DVA prefers employees in DVA to make public interest disclosures to an AO, rather than to their Supervisor/Manager, but this is a matter of choice for DVA employees.

AO's in DVA have been trained to receive public interest disclosures and can provide information about the PID Act and protections for disclosers.

If a Supervisor/Manager becomes aware a DVA employee is proposing to make a public interest disclosure, they should suggest the employee discuss the matter with an AO.

The information in a disclosure should be clear, factual, avoid speculation, personal attacks or emotive language. If possible, any witnesses to the disclosable conduct should be provided.

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

A DVA employee who makes a false or misleading report or disclosure will not have any protections under the PID Act and may be subject to disciplinary action.

A person who is considering making a disclosure should be aware that making a disclosure does not entitle them to protection from the consequences of their own wrongdoing.

Once a public interest disclosure has been made, it cannot be withdrawn. However, a discloser may advise they do not want the disclosure to be investigated, and this will be taken into account. The discloser may also decline to have their name and contact details provided to the Secretary.

A person who has made a disclosure under the PID Act should not discuss the details of their disclosure with anyone who does not have a need to know about it. Any discussions with others will not be protected by the provisions of the PID Act.

Anyone who reveals the identity of a discloser without the authority to do so, could be deemed to have committed a criminal offence.

Procedures for Supervisors / Managers

A Supervisor/Manager (or an AO) who receives a disclosure from a public official must handle the disclosure in accordance with the PID Act and in accordance with the *Public Interest Disclosure Standard 2013* and these procedures.

Information/support will be provided to public officials making disclosures including:

- a) advising the public official of their rights and obligations under the PID Act
- b) informing the discloser of the progress of the investigation (in the event the matter is investigated)
- c) ensuring that the identity of the discloser is kept as confidential as far as is reasonably practicable
- d) providing support if there are concerns about the health and safety of an employee
- e) providing the opportunity for disclosers to be accompanied by a support person when either making a disclosure or in attending interviews or meetings.

DVA employees who make disclosures will also be advised about the availability of the Employee Assistance Program.

Note: These options would also be available to a person who is subject to an allegation of any wrong doing.

If a DVA employee discloses information/makes a complaint to their Supervisor/Manager, and the Supervisor/Manager has reasonable grounds to believe the information concerns disclosable conduct, the Supervisor/Manager must pass the information to an AO in DVA.

If the disclosure is not made in writing, the Supervisor/Manager must make a written record of the information provided, including the date received and have the discloser sign the record.

When passing the information to an AO, the Supervisor/Manager must give the AO a written assessment of any risks of reprisal action against the person who disclosed the information.

After the Supervisor/Manager has passed the information to an AO, they should inform the discloser that this has occurred and advise the name and contact details of the AO.

Procedures for Authorised Officers

Authorised Officer must advise disclosers/potential disclosers about the PID Act

AO's have an important role in advising disclosers or potential disclosers about the PID Act and these procedures.

An AO should advise disclosers/potential disclosers what constitutes an "internal" disclosure under the PID Act.

The AO must explain the protections provided by the PID Act and any orders/directions which may affect the disclosure of information.

Authorised Officer must decide whether or not to allocate a disclosure

When a disclosure is made directly to an AO, the AO must make a written record of the details of the disclosure/any discussions. If the disclosure is not in writing, the AO must make a written record of the substance of the information provided and ask the discloser to sign the record.

An AO must decide what action to take regarding the disclosure within 14 days of receipt.

The AO must decide whether the information they have received fits the definition of an “internal disclosure” under the PID Act.

The information provided may not meet the definition of an “internal disclosure.” This may be due to the following:

- The person providing the information is not a public official
- The information is not about disclosable conduct
- The person who is alleged to have carried out the disclosable conduct was not a public official at the time of the alleged conduct
- The information is not otherwise a public interest disclosure within the meaning of the PID Act.

Where an AO decides that information given to them will not be allocated, they must advise the discloser in writing of this decision (where the contact details of the discloser are known).

The AO must keep a written record of advising the discloser of the decision not to allocate and the reasons for this decision.

If not able to contact the discloser, they must record this in a File Minute.

Where Authorised Officer allocates an internal disclosure

Where the AO is aware of the contact details of the discloser the AO must inform the discloser of the fact of the allocation, and of the content of the allocation as soon as reasonably practicable.

Where an AO allocates a disclosure, they must conduct a risk assessment, having regard to any assessment of risk provided by the discloser’s Supervisor/Manager.

Please refer to the the Ombudsman’s ‘[Agency Guide to the Public Interest Disclosure Act 2013](#)’ for information on carrying out a risk assessment.

Where an Authorised Officer allocates an internal disclosure to another agency

An AO in DVA must obtain the consent of an AO in another Agency before transferring an internal disclosure to the other Agency. The DVA AO must advise the Principal Officer of the Agency.

Where the AO allocates a disclosure to another Agency and is unable to inform the discloser of this decision, the AO must retain a written record of the referral/reasons for referral.

Anonymous Disclosures

A public interest disclosure may be made anonymously.

All persons, including public officials, persons who have been public officials and others, are encouraged to make public interest disclosures in an anonymous way if they wish to do so.

A disclosure is anonymous if the identity of the discloser is not revealed and no contact details are provided.

Anonymous disclosures can be investigated under the PID Act.

Where a Supervisor/Manager receives an anonymous disclosure, they must refer it to an AO as soon as is reasonably practicable.

Where an AO receives an anonymous disclosure, they must consider whether to exercise their power in accordance with Section 70 of the PID Act to determine whether the person who disclosed the information is a public official.

If the AO cannot contact the discloser in writing, no determination can be made because the AO must be able to give written notice of the determination in accordance with Section 70(1) of the PID Act.

A discloser may request an AO make a decision to deem them to be a public official for the purposes of making a public interest disclosure.

An AO must consider this request, make a determination and advise the discloser in writing including giving reasons for their decision.

AOs may wish to seek legal advice about drafting decisions/notices.

Deciding whether or not to Investigate

The Secretary must decide, as soon as practicable after receiving an allocation of a disclosure from an AO, whether to exercise the discretion under Section 48 of the PID Act not to investigate the disclosure.

The Secretary may determine not to investigate (or discontinue an investigation) if:

- a) the discloser is not a current or former public official (and a determination has not previously been made under Section 70 of the PID Act about this)
- b) the information does not represent serious disclosable conduct
- c) the disclosure is frivolous or vexatious
- d) the disclosure is 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, under another law of the Commonwealth, and

- a. it would be inappropriate to conduct another investigation at the same time, or
- b. the Secretary or delegate is reasonably satisfied that there are no matters that warrant further investigation, or
- f) the discloser has informed the Secretary that they do not wish the disclosure to be pursued and the Secretary is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation
- g) it is impracticable to investigate the disclosure because:
 - a. the discloser has not revealed their name and contact details, or
 - b. the discloser has refused or has failed or is unable to give the investigator the information they requested, or
 - c. of the length of time since the conduct occurred.

Where an AO allocates an internal disclosure to the Secretary, and the Secretary has been given the contact details of the discloser, the Secretary must, within 14 days after the disclosure was allocated to DVA, inform the discloser in writing that the Secretary may decide not to investigate the disclosure, or not to investigate the disclosure further, and the Secretary must inform the discloser of the grounds on which a decision not to investigate, or not to investigate further, may be taken.

Guidance on factors that might go towards the exercise of the power in section 48 is provided in the Ombudsman's ['Agency Guide to the Public Interest Disclosure Act 2013'](#).

Decision to investigate

Where the Secretary decides to investigate a disclosure, they must inform the discloser of this decision and the estimated duration of the investigation.

If a decision is subsequently made under Section 48 to discontinue an investigation, the discloser must be advised of this decision and the reasons for this decision, as well as advising the Ombudsman's office of the decision.

Procedures for Investigators

If it's decided to commence an investigation, an Investigating Officer is to be appointed.

Any investigation must be independent and unbiased and the evidence gathered must enable a decision to be made, on the balance of probabilities, as to whether the alleged disclosable conduct occurred.

In conducting an investigation, the Secretary must ensure compliance with:

- a) the *Public Interest Disclosure Act 2013*
- b) the *Public Interest Disclosure Standard 2013*
- c) these Procedures
- d) Procedures established under s 15(3) of the *Public Service Act 1999*
- e) The *Public Governance, Performance and Accountability Act 2013*.

Interviewing witnesses

There may be a need to interview witnesses during an investigation.

Subject to any restrictions imposed by a law of the Commonwealth (other than the PID Act) and subject to any requirement to conduct the investigation in accordance with any rules relating to fraud that are made for the purposes of the *Public Governance, Performance and Accountability Act 2013*, the investigator must ensure that, if a person is interviewed as part of the investigation of an internal disclosure, that person is informed of:

- a) the identity and function of anyone conducting the interview
- b) the process of conducting an investigation
- c) the authority of the investigator under the PID Act to conduct an investigation
- d) the protections provided to the person by section 57 of the PID Act
- e) the person's duty:
 - a. if they are a public official—to use their best endeavours to assist the investigator in the conduct of an investigation under the PID Act (subject to the public official's privilege against incriminating themselves or exposing themselves to a penalty)
 - b. not to take or threaten to take reprisal action against the discloser
 - c. subject to the PID Act, not to disclose the identity of the person who made the disclosure.

Where the investigator conducts an interview as part of an investigation, the interviewee must be given an opportunity to make a final statement or comment or express a position.

The investigator must include any final statement, comment or position in the record of the interview.

The investigator must ensure that an audio or visual recording of any interview is not made without the interviewee's knowledge.

Where the investigator is aware of the discloser's identity and considers it is necessary to reveal the discloser's identity to a witness, the investigator must consult with the discloser, where practicable, before revealing the discloser's identity.

Procedural fairness

When allegations are made against an individual, procedural fairness does not require that they are told immediately about the allegations or that an investigation has commenced.

Procedural fairness may require that the discloser's identity be revealed to the person who is the subject of the disclosure. If this is the case, legal advice should be sought by the Investigator.

Where the investigator proposes to:

- a) make a finding of fact, or
- b) express an opinion

that is adverse to the discloser, or to another person, the investigator must give the person who is the subject of that proposed finding or opinion a copy of the evidence relevant to that proposed finding or opinion and must give the person a reasonable opportunity to comment on it.

Time limits

The investigator has 90 days from the date the disclosure was allocated to complete the investigation.

It is possible to seek one or more extensions of time from the Ombudsman.

A request to the Ombudsman for an extension of time is to be made where an investigation has not been completed within 70 days of the date the disclosure was allocated.

An application to the Ombudsman for extension should include reasons why the investigation cannot be completed within the time limit, the views of the discloser and an outline of action taken to progress the investigation.

Where an application for an extension of time is granted by the Ombudsman the investigator must, as soon as reasonably practicable, inform the discloser of the progress of the investigation.

An investigation not completed within the time limit does not become invalid, but may be subject to adverse comment from the Ombudsman's office.

Reports of Investigations

An investigator must prepare an investigation report. The investigator must comply with the PID Act, the *Public Interest Disclosure Standard 2013* and these Procedures.

The report must set out:

- a) the matters considered in the course of the investigation
- b) the duration of the investigation
- c) the investigator's findings (if any)
- d) the action (if any) that has been, is being or is recommended to be taken
- e) any claims made about, and any evidence of, detrimental action taken against the discloser, and DVA's response to those claims and that evidence

and, where relevant, must:

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

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

- a) that the report has been completed
- b) whether the report was completed within the time limit specified in the PID Act.

The investigator must, within a reasonable time of preparing their report give a copy of the report to the discloser.

The investigator may delete or from the copy of the report provided to any party material:

- a) likely to identify the discloser (if they have asked to remain anonymous)
- b) the inclusion of which would result in the copy being a document:
 - a. *that is* exempt for the purposes of Part IV of the Freedom of Information Act 1982, or
 - b. having, or being required to have, a national security or other protective security classification, or
 - c. containing intelligence information.

The investigator must also delete from the copy of a report given to the discloser any material which would result in the report contravening a designated publication restriction.

Confidentiality

The investigation is to be conducted in as confidential a manner as is possible. In particular, the identity of both the discloser and the person alleged to have engaged in the disclosable conduct is not to be revealed except where this is reasonably necessary for the effective investigation of the disclosure (including because of the need to afford procedural fairness).

Any interviews conducted by an AO or an investigator are to be conducted in private.

Any interviews with the discloser are to be arranged so as to avoid, to the extent practicable, the identification of the discloser by other persons.

Record-Keeping

Where an AO is required to keep a record under these Procedures, the record may be kept in hard copy or in an electronic form (or both). Access to these records must be restricted to the AO's, delegates (including investigators) or other employees in DVA who require access in order to perform some function under the PID Act or for the purposes of another law of the Commonwealth (for example, under the *Work Health and Safety Act 2011* or the *Public Service Act 1999*). If a discloser has not consented to their name and contact details being provided to the principal officer, the relevant investigator and the principal officer must not be given access to this information.

Where a notification is required to be sent under these Procedures, a copy of this notification must be kept.

All records made for the purposes of the PID Act in accordance with these Procedures must be marked as 'in-confidence' and hard copies must be stored in an appropriate storage container.

Any email messages sent by AO's or investigators containing discloser-identifying information must be clearly marked 'to be read by named addressee only'.

Where a person will cease being an AO in DVA (including because of resignation or movement to another agency), their PID records must be transferred to another AO in DVA.

Monitoring and Evaluation

Each AO must provide a monthly report to the Secretary specifying the number of public interest disclosures received by the AO and the nature of the disclosable conduct for each disclosure (by reference to the relevant item or paragraph in the definition of disclosable conduct in the Act). The report must also include any disclosures that have been allocated to DVA by another agency.

The Secretary will appoint the PID Contact Officer to collate DVA's report to the Ombudsman on public interest disclosures made during the financial year.

Each investigator must advise the PID Contact Officer of every decision made by the investigator to investigate a disclosure under the PID Act during the financial year.

The PID Contact Officer must prepare a report for the Secretary's consideration within the timeframe specified by the Secretary.

The Secretary will send DVA's report to the Ombudsman within the time requested by the Ombudsman or as otherwise agreed with the Ombudsman.

Evaluation / Review

This policy will be reviewed in December 2019.