



DVA People Procedure – Public Interest Disclosures

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1. Introduction

The *Public Interest Disclosure Act 2013* (PID Act) provides for the disclosure and investigation of wrongdoing and maladministration in the Australian Public Service (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.

DVA is committed to the highest standards of ethical conduct and providing support for disclosers who report wrongdoing. This procedure sets out how a public official may make a public interest disclosure and the steps DVA will take to ensure compliance with the PID Act and the Public Interest Disclosure Standard 2013 (PID Standard).

What is a Public Interest Disclosure?

A public interest disclosure is a disclosure of suspected wrongdoing or maladministration. In order to be a public interest disclosure under the PID Act, the following requirements must be met:

- the person disclosing the suspected wrongdoing must be a current or former public official;
- the disclosure must contain information that tends to show, or the public official believes on reasonable grounds that the information tends to show, an instance of disclosable conduct; and
- the disclosure must be communicated to an appropriate person.

A person who makes a public interest disclosure or provides assistance in relation to a public interest disclosure is not subject to any civil, criminal or administrative liability (including disciplinary action) for disclosing information in accordance with the provisions of the PID Act.

Who can make a disclosure under the PID Act?

A current or former public official is entitled to make a public interest disclosure. Public officials are defined in sections 69 and 70 of the PID Act and include:

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



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

What is Disclosable Conduct?

A public official can disclose information that they believe, on reasonable grounds, tends to show that disclosable conduct has occurred. 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 public official that:

- contravenes a Commonwealth, state or territory law;
- occurred in a foreign country and contravenes a foreign law that applies to the agency, official or service provider;
- perverts the course of justice;
- is corrupt;
- constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent;
- is an abuse of public trust;
- results in wastage of public money or public property;
- unreasonably endangers health and safety; or
- endangers the environment.

Disclosable conduct also includes conduct by a public official that:

- involves or is engaged in for the purposes of abusing their position as a public official; or
- could give reasonable grounds for disciplinary action resulting in termination of the public official's engagement.

Personal work-related conduct (for example, bullying or harassment) is not generally disclosable conduct, unless it constitutes reprisal action or has significant implications for an agency, including by undermining public confidence in the agency.

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.

Who can a Public Interest Disclosure be made to?

A disclosure must be made to an appropriate person in order to gain the protections available under the PID Act.



Internal disclosure

Under the PID Act, a public official can make an internal disclosure to their current supervisor or an authorised officer (AO) in:

- their current agency;
- the agency to which they previously belonged; or
- the agency to which the disclosure relates.

A supervisor is anyone who supervises or manages the discloser, for example:

- the EL or SES employee in the employee's reporting line; or
- a public official who is the contract manager for a contracted service provider.

It is important to note that information disclosed by an employee in the ordinary course of their duties will not be taken to be a public interest disclosure. This means that employees who wish to make an internal public interest disclosure should make it clear that they are sharing the information for that purpose.

Further information on how to make an internal disclosure is set out at Part 2 of this procedure.

Disclosure to the Ombudsman

A public official can also make a disclosure to authorised officers of the Commonwealth Ombudsman, if they believe on reasonable grounds that it would be appropriate for the Ombudsman to investigate.

Authorised officers within the Ombudsman's office will seek information from the discloser about the reasons why they believe the Ombudsman should investigate their disclosure, rather than the agency to which the disclosure relates. The Ombudsman may decide to allocate the disclosure to the agency concerned, unless that would be clearly inappropriate, for example, because of an unavoidable conflict of interest.

Disclosures to other people - emergency and external disclosures

The PID Act permits disclosure to people outside government (for example, to the media, a union official or a member of parliament) in very limited circumstances. Disclosures to people outside an agency, other than the Ombudsman, are protected by the PID Act only in the limited circumstances set out below:

- **Emergency disclosure:** If a public official believes on reasonable grounds that the information they have concerns 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). The disclosure must meet certain requirements set out in section 26 of the PID Act.



- External disclosure: A public official who has already made an internal disclosure under the PID Act may subsequently make a disclosure to any person (except a foreign public official), if certain requirements are met. The requirements are set out at section 26 of the PID Act and include a requirement that the disclosure is not contrary to the public interest.
- Disclosure to a legal practitioner: A public official may disclose information to an Australian legal practitioner for the purposes of seeking legal advice or professional assistance in relation to the official's actual or proposed disclosure.

If these circumstances are not met, the disclosure will not attract the protections of the PID Act.

Disclosures to the National Anti-Corruption Commission

Information provided to the National Anti-Corruption Commission (NACC) will also constitute a public interest disclosure if:

- the information is provided by a current or former public official;
- the information tends to show, or the public official believes on reasonable grounds that the information tends to show, an instance of disclosable conduct; and
- the disclosure is a NACC disclosure as defined in the National Anti-Corruption Commission Act 2022.

This means that disclosers who make a NACC disclosure will be entitled to protections under the PID Act.

Note that there are separate requirements for making a disclosure to the NACC. Employees who wish to make a disclosure to the NACC should refer to the NACC website and the *National Anti-Corruption Commission Act 2022*.

Protection from Liability for making a Public Interest

Disclosure

A person who makes a public interest disclosure as defined will not be subject to any civil, criminal or administrative liability (including disciplinary action). Even if the disclosed information turns out to be incorrect or unable to be substantiated, a discloser is protected by the PID Act, provided that they:

- made their disclosure to an appropriate person under the PID Act; and
- honestly believed on reasonable grounds that the information tended to show disclosable conduct.
- The protection from liability does not apply insofar as the discloser knowingly:
 - made false or misleading statements; or



- provided information which contravenes a designated publication restriction, without a reasonable excuse for that contravention.

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. For example, if the employee has taken part in the misconduct they are reporting.

Protection for witnesses and people who provide assistance in relation to a Public Interest Disclosure

The PID Act requires public officials to use their best endeavours to assist an investigation into a public interest disclosure and assist other public officials to exercise their rights and discharge their obligations under the PID Act.

The PID Act includes protections for people who provide assistance in relation to a public interest disclosure. Providing assistance may include answering questions, or providing information or documents that the person believes on reasonable grounds to be relevant to the allocation, investigation or external review of the PID. Individuals who provide assistance in relation to a PID are known as witnesses.

Witnesses providing assistance in relation to a PID will not be subject to any civil, criminal or administrative liability (including disciplinary action) for the assistance they provide. In addition, no contractual or other remedies may be exercised against the witness because of the assistance provided. For example, a contract to which the witness is a party cannot be terminated on the basis that the assistance provided is a breach of the contract.

It is important to be aware that witnesses are not protected in relation to statements that the witness knows are false or misleading.

A witness should also be aware that providing assistance does not entitle them to protection from the consequences of their own wrongdoing. For example, if the employee has taken part in the misconduct they are providing information about, they are not protected from disciplinary action for that misconduct.

Protection from reprisal action

The PID Act includes provisions to protect people from being subject to reprisal action as a result of a disclosure. These protections are available to anyone who suffers or is threatened with detriment in connection with a disclosure. This includes a discloser, a witness or another employee.

The PID Act protects individuals from reprisal in the following ways:

- a. it is a criminal offence for anyone to cause or threaten to cause detriment to a person because they suspect that a public interest disclosure has or will be made (even if they suspect the disclosure has been made by someone else) ;



- 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; and
- c. a person has the right to apply for compensation for loss, damage or injury suffered from a reprisal.

An employee who believes they have experienced reprisal action should contact an Authorised Officer as soon as possible.

Disclosers should note that making a public interest disclosure does not prevent supervisors and managers from addressing the discloser's unsatisfactory performance in the workplace.

2. The Disclosure Process

Procedure – Making a Public Interest Disclosure

Employees/Public Officials

How to make a public interest disclosure

A public interest disclosure may be made orally or in writing. The discloser may choose to remain anonymous or use a pseudonym when making a disclosure. DVA will act on all disclosures made anonymously, however anonymous disclosers should be aware that it may be more difficult for DVA to investigate the disclosure or ensure protection for reprisal action, where the discloser is anonymous. The discloser may also decline to have their name and contact details provided to the principal officer delegate.

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 the disclosure is made under the PID Act. However, information disclosed by an employee in the ordinary course of their duties will not be taken to be a public interest disclosure. This means that employees who wish to make an internal public interest disclosure should make it clear that they are sharing the information for that purpose.

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.

Making a public interest disclosure to a Supervisor/Manager or Authorised Officer

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



Authorised Officers of DVA are listed on DVA's website at <https://www.dva.gov.au/about-us/overview/reporting/information-publication-scheme/public-interest-disclosure-scheme#authorised-officers>.

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

If a person is considering making a public interest disclosure, it is recommended that they contact an AO to obtain information. However, it is not necessary for them to contact the AO or to disclose their identity when doing so.

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.

AOs 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 that a DVA employee is proposing to make a public interest disclosure, they should suggest the employee discuss the matter with an AO. If a Supervisor/Manager receives a public interest disclosure, they must give the disclosure to an AO as soon as reasonably practicable.

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 PID Act.

What to include in a public interest disclosure

The information in a disclosure should be clear, factual, avoid speculation, personal attacks or emotive language. If possible, the names of any witnesses and any supporting documents should be provided.

The following information is often useful to include in a disclosure:

- the discloser's name and contact details - this is optional (please see section 4 of this procedure on anonymous disclosures);
- the nature of the suspected wrongdoing;
- who the discloser believes committed the suspected wrongdoing;
- when and where the suspected wrongdoing occurred;
- how the discloser became aware of the suspected wrongdoing;
- whether the suspected wrongdoing has been reported to anyone else and if so, what that person has done to fix, stop or prevent it; and
- whether the discloser is concerned about possible reprisal as a result of making a disclosure.



Disclosers are encouraged to make a disclosure as soon as possible after an incident occurs, in order for DVA to take appropriate action.

Support for disclosers

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

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

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

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

Note: This support is also available to a person who is subject to an allegation of wrongdoing.

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, the PID Standard and these procedures.

If a DVA employee discloses information or 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:

- inform the discloser that the information could be treated as a disclosure for the purpose of the PID Act;
- explain the procedure for disclosures to be given to an AO, allocated and investigated under the PID Act;
- advise the discloser about when a public interest disclosure must be referred to another agency under another law of the Commonwealth;
- explain the civil and criminal protections the PID Act gives disclosers and witnesses from reprisal action; and
- pass the information to an AO in DVA as soon as reasonably practicable.



If the disclosure is not made in writing, the Supervisor/Manager must make a written record of the information provided, including the date received. It is good practice to ask the discloser to sign the record.

When passing the information to an AO, the Supervisor/Manager must also pass on any information they have about potential reprisal risks 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 give them the name and contact details of the AO to whom it was provided.

3. Authorised Officers

Advising Disclosers

Authorised Officers (AO) have an important role in advising disclosers or potential disclosers about the PID Act and these procedures.

An AO should advise disclosers/potential disclosers on:

- the requirements of making an internal public interest disclosure under the PID Act;
- the protections provided by the PID Act;
- when a public interest disclosure must be referred to another agency under another law of the Commonwealth; and
- any orders/directions which may affect the disclosure of the information.

Receiving and assessing a Disclosure

An AO is responsible for receiving, assessing and allocating public interest disclosures.

When a disclosure is made directly to an AO, the AO must make a written record of the details of the disclosure/discussion. 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 may also receive disclosures made to a Supervisor/Manager, who then gives the information to the AO.

Upon receipt of a potential public interest disclosure, the AO should:

- advise the person making the disclosure of the process, available support and the circumstances under which their disclosure must be referred to another agency;
- seek their consent to identify them to the principal officer delegate (who will conduct any investigation);
- make any preliminary inquiries required to allocate the disclosure; and



- if the disclosure raises a corruption issue, refer the matter to the NACC and notify the discloser of the referral.

An AO must decide whether the disclosure meets the definition of an internal disclosure under the PID Act and should be allocated for investigation within 14 days of receipt.

The information provided may not meet the definition of an “internal disclosure” where:

- The person providing the information is not a public official or former 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 is not a public interest disclosure, the disclosure will not be allocated to the principal officer delegate and the AO must advise the discloser in writing of this decision (where the contact details of the discloser are known).

The AO must make a written record of:

- the decision not to allocate and the reasons for this decision; and
- any correspondence or discussions with the discloser to inform them of their decision.

If the AO is not able to contact the discloser, the AO must still keep a record of the decision not to allocate the disclosure and the fact the decision not to allocate couldn't be communicated to the discloser because they couldn't be contacted.

Allocating an internal disclosure

Allocating and recording an internal disclosure

If an AO determines that a disclosure is a public interest disclosure, they must allocate the disclosure either to the principal officer delegate in DVA or another agency that the disclosable conduct relates to. The AO must use their best endeavours to allocate the disclosure within 14 days from the date it is received.

The AO should make a written File Minute of their allocation decision, the reasons for the decision and the receiving agency's consent to the allocation (if allocated to another agency for handling).

The AO must also give written notice of the allocation decision to the Ombudsman and the principal officer of the agency to whom the disclosure is allocated.

If an AO intends to allocate the disclosure to another agency, the AO must first obtain the consent of an AO in the receiving agency

A flowchart of the process for internal disclosures is set out at **Attachment A**.



Advising the discloser of the allocation

Where the AO is aware of the contact details of the discloser, the AO must give written notice to the discloser of the fact of the allocation, and a copy of the notification to the Ombudsman and principal officer of the agency as soon as reasonably practicable. The AO must make a written record of whether the discloser was able to be notified of the allocation decision and if so:

- how the notification was made;
- the date and time the discloser was notified;
- the means by which the discloser was notified; and
- the content of the notification.
- These records must be stored in Content Manager 9 (TRIM).

If the AO considers it is not reasonably practicable to contact the discloser, they should make a record explaining why, including details of the time, date and method of any contact attempts made.

Circumstances in which a disclosure may not be allocated

An AO may not allocate the disclosure where:

- there is no reasonable basis on which the disclosure could be considered an internal disclosure;
- the conduct would be more appropriately investigated under another law or power.
 - In these circumstances, the AO must refer the conduct disclosed to the appropriate body for investigation.

The AO must give the discloser and the Ombudsman written notice of the decision not to allocate the disclosure as soon as reasonably practicable, including reasons for the decision not to allocate and details of any other action the AO has taken or proposes to take in response to the disclosure. If the AO does not propose to take any action in response to the disclosure, they must also notify the discloser of any course of action which might be available to the discloser under another law or power.

An AO may be unable to allocate a disclosure where the agency has received a stop action direction from the NACC.

In these circumstances, the AO must inform the Ombudsman about the stop action direction. If the stop action direction ceases to have effect, the AO may then proceed to allocate the disclosure.

Conducting a risk assessment

Where an AO allocates a disclosure, they must conduct a risk assessment as soon as possible, having regard to any advice provided by the discloser's Supervisor/Manager. The assessment must consider the risk that the discloser or another employee will be subject to reprisal action in relation to the



disclosure, including the specific behaviour and circumstances that may result in reprisals, and then putting in place appropriate strategies to prevent or contain them.

The AO must make a written record of the risk assessment and any action taken to protect or support the discloser. These records must be stored in Content Manager 9 (TRIM).

The AO must ensure that the risk assessment is regularly reviewed and updated while the disclosure is on foot. In particular, the AO must review the risk assessment at the commencement and completion of any investigation.

Please refer to the Ombudsman's ['Agency Guide to the Public Interest Disclosure Act 2013'](#) for information on carrying out a risk assessment and [DVA Risk Assessment Procedures].

4. Anonymous Disclosures and Using a Pseudonym

A public interest disclosure may be made anonymously, including under a pseudonym. 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. However, anonymous disclosers should be aware that it may be more difficult for DVA to investigate the disclosure or ensure protection for reprisal action where the discloser is anonymous.

DVA encourages disclosers to consider identifying themselves or providing a means of contact for the following reasons:

- The PID Act requires agencies to keep a discloser's identity confidential, subject to limited exceptions. Some exceptions include where the discloser provides consent or where it is necessary for the purposes of the PID Act to disclose the information, such as to protect the person against reprisal action.
- The person's identity may nonetheless become apparent if an investigation is commenced. If the person's identity needs to be disclosed or is likely to become apparent, DVA would prefer to discuss this with the discloser.
- It will be difficult to ensure protection from reprisal if DVA does not know the discloser's identity.
- The AO 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 they cannot contact the person to seek necessary further information, the matter may not proceed.
- It may be difficult to conduct an investigation if the discloser cannot be contacted for further information. An investigator has the discretion not to investigate, or not investigate further, if the discloser does not provide their name and contact details or is unable to give the investigator further information or assistance if needed.



- 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.

Where a person makes an anonymous disclosure, it is open to them to come forward at a later stage to identify themselves and confirm that they have the protections of the PID Act.

If a Supervisor/Manager receives a disclosure and the discloser asks that they remain anonymous, the Supervisor/Manager must respect the discloser's anonymity and refer the de-identified disclosure to an AO as soon as is reasonably practicable.

Where an AO receives an anonymous disclosure, they must assess whether the information is a public interest disclosure, including whether it has been made by a current or former public official. This may be assessed on the basis of the information that the anonymous discloser has provided, for example, information about their previous role or how the conduct came to their attention. Disclosers do not need to prove their status beyond doubt.

If the AO is not satisfied that the discloser is a current or former public official, the AO may consider whether to exercise their power in accordance with section 70 of the PID Act to deem that the discloser is a public official.

A discloser may also 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.

If the AO cannot contact the discloser in writing, no determination (about whether the person who disclosed the information is a public official) 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.

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

5. The Investigation Process

Delegation

The Secretary, as the principal officer of DVA, has responsibility for investigating public interest disclosures. This function can be delegated pursuant to section 77 of the PID Act. References to the principal officer throughout this part include references to a delegate of the Secretary.



Procedure – Investigating a Public Interest Disclosure

Deciding whether to Investigate

The principal officer must decide as soon as practicable whether to exercise the discretion under section 48 of the PID Act not to investigate the disclosure.

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

- 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);
- the information does not concern serious disclosable conduct;
- the disclosure is frivolous or vexatious;
- the disclosure is substantially the same as information previously disclosed under the PID Act and that disclosure has been or is being investigated or a decision was made under section 48 not to investigate;
- the conduct disclosed, or substantially the same conduct, has been or is being investigated and the principal officer is satisfied on reasonable grounds that there are no matters that warrant further investigation;
- the principal officer is satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power (but not just because it raises a corruption issue). In such cases the principal officer must, as soon as reasonably practicable, take reasonable steps to refer the conduct disclosed for investigation under the other law or power;
- the discloser has informed the principal officer or AO that they do not wish the disclosure to be pursued and the principal officer is satisfied on reasonable grounds that there are no further matters concerning the disclosure that warrant investigation.

If the principal officer decides to exercise their discretion under section 48 not to investigate the disclosure, the principal officer will give written notice of the decision to the discloser and the Ombudsman. The written notice must include information about whether the principal officer has decided to refer the conduct for investigation under another law or power.

The principal officer may decide to exercise their powers under section 48 at any time in the investigation process.

If reasonably practicable, within 14 days of a disclosure being allocated to DVA, the principal officer must inform the discloser in writing about the principal officer's powers to decide not to investigate the disclosure, or not to investigate the disclosure further.



Decision to Investigate

Where the principal officer decides to investigate a disclosure, they must inform the discloser of this decision and the estimated duration of the investigation. The principal officer may also appoint an investigator to undertake the investigation, including an external investigator where appropriate.

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.

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 principal officer must ensure compliance with:

- the *Public Interest Disclosure Act 2013*;
- the *Public Interest Disclosure Standard 2013*;
- these procedures;
- when investigating a disclosure concerning an alleged breach of the Code of Conduct under the *Public Service Act 1999*, procedures established under s 15(3) of the *Public Service Act 1999*;
- the *Public Governance, Performance and Accountability Act 2013*.

Conduct of Investigations

The investigator has a broad discretion to determine how to conduct an investigation.

In some cases, it will be possible to investigate an internal disclosure by obtaining and examining existing agency records. The investigator may also seek general background information (e.g. advice from a business line about the agency's usual processes, or copies of written procedures). This can be done informally, without following the formal requirements for conducting a PID interview.

However, it will usually be necessary for the investigator to obtain additional information from the discloser and other possible witnesses. This could be done by way of a list of written questions, or in an interview conducted by telephone or in person. Whether in writing or in person, the PID Investigator's requests for specific information from an individual should be regarded as an interview in connection with a PID investigation. Those interviews are subject to some specific requirements, discussed below.

Interviewing Witnesses

Requirement to participate in an interview



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

When investigating a disclosure, the investigator may obtain information from such persons and make such inquiries as they think fit (section 53(2) PID Act). All current public officials are obliged to use their best endeavours to assist the principal officer in a PID investigation (section 61(1) PID Act).

The PID Act does not give investigators any powers to compel witnesses to attend interviews, answer questions or produce documents. However, APS staff have an obligation under the APS Code of Conduct:

- to comply with any lawful and reasonable direction given by DVA; and
- not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment.

Information to be given to witnesses

At the start of each witness interview, the investigator must inform each witness of:

- a. the identity and function of each person 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 the PID Act (refer to the section above regarding Protection for Witnesses);
- e. that information about the matter is confidential, that release of information may jeopardise an investigation and that the witness may be committing an offence if they divulge any information that is likely to identify the discloser; and
- f. the person's duty:
 - i. 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;
 - ii. not to take or threaten to take reprisal action against the discloser; and
 - iii. 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 considers it is necessary to reveal the discloser's identity to a witness in order to effectively investigate the disclosure, the investigator must consult the discloser, where practicable, before revealing the discloser's identity.



Where the identity of a discloser may become apparent through the investigation process, the investigator should discuss this risk with the discloser.

Protections for witnesses

Witnesses are entitled to certain protections in relation to their participation in a PID process. Please see the section of this Procedure titled 'Protection for witnesses and people who provide assistance in relation to a Public Interest Disclosure' on page 5.

Evidence

Standard of proof

The standard of proof in a PID investigation is the civil standard: a fact is only taken to be proved if there is sufficient evidence to prove it 'on the balance of probabilities' (section 11 PID Standard), that is that the principal officer or delegate is satisfied on the basis of the evidence gathered during the investigation that it is more likely than not that the disclosable conduct occurred.

It is not necessary for the principal officer to positively identify a person or persons responsible for the conduct. It is enough to be satisfied that the conduct was engaged in by an official belonging to the agency, or the agency more broadly.

Probative evidence

The evidence relied upon in a PID investigation must be relevant (section 12(2), PID Standard) and any finding of fact in a PID investigation must be based on logically probative evidence (section 12(1), PID Standard).

Use of information

Secrecy provisions in other Commonwealth laws will not apply to the disclosure, recording or use of information in connection with action taken under the PID Act, subject to certain exceptions: see s 75 of the PID Act.

Procedural Fairness

The investigator must ensure that a person against whom allegations are made is accorded procedural fairness (also known as 'natural justice') in the investigation process. If adverse information comes to light about others in the course of the investigation, those persons are also entitled to procedural fairness. This could include the discloser.

What procedural fairness requires varies with the circumstances, but essentially it means that the person is entitled to:

- have a decision-maker act fairly and without bias;



- know the substance of allegations and evidence against them if an adverse finding is going to be made about their conduct; and
- have a reasonable opportunity to respond.

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. The requirement to provide the person with an opportunity to respond to an allegation about them only arises at the point where it is likely that an adverse finding is to be made about their conduct. This means that a person does not need to be told about allegations made about them that the agency decides are of no substance (for example if the agency decides not to investigate a disclosure, or stop the investigation, on the basis that the disclosure is clearly frivolous or vexatious).

Where the investigator proposes to:

- make a finding of fact; or
- 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 sufficient information to be able to respond to that proposed finding or opinion and must give the person a reasonable opportunity to respond to it.

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

Information given to an official who is the subject of the disclosure

The PID Act does not require the investigator to give a copy of a public interest disclosure to the person who is the subject of that disclosure, or tell them the identity of the person who made the disclosure. The information that the subject of the disclosure is entitled to be told will depend upon what is necessary to investigate the allegations in a way that observes procedural fairness.

The investigator should give a person who is subject to allegations of wrongdoing information about:

- their rights and obligations under the PID Act;
- DVA's investigation procedures, including (if applicable) for Code of Conduct investigations; and
- information about support available to the person, including DVA's employee assistance program.



Time Limits

The investigator has 90 days from the date the disclosure was allocated (or re-allocated, or a decision was made to re-investigate, or a stop action direction under the NACC Act ceased to apply) to complete the investigation. The investigation is complete when the report is prepared.

It is possible to seek one or more extensions of time from the Ombudsman. The Ombudsman's website should be consulted for guidance as to the requirements applicable when seeking an extension.

An investigation not completed within the time limit does not become invalid, but may be subject to adverse comment from the Ombudsman's office and may entitle the discloser to make an external disclosure. If the time limit is exceeded, DVA remains obliged to complete the investigation and prepare a report.

Reports of Investigations

Content of the investigation report

The principal officer must prepare an investigation report. The report must set out:

- the matters considered in the course of the investigation, including:
 - the disclosable conduct alleged by the discloser
 - any other possible disclosable conduct identified
- the duration of the investigation
- the steps taken to gather evidence
- a summary of the evidence
- the principal officer's findings (if any), including:
 - whether there were any instances of disclosable conduct and if so, what type
 - the laws, rules or procedures to which the disclosable conduct relates
- any action taken, or being taken, to address the findings
- recommendations about other actions to address the findings
- any claims of reprisal action taken against the discloser or any other person, and DVA's response, including:
 - any claims about reprisal action taken against the discloser or any other person, that relate to the matters considered in the course of the investigation
 - any evidence in relation to those claims of reprisal
 - how DVA responded to those claims (e.g. investigation, support or protection for the discloser)



- whether DVA found any evidence of detrimental action against the discloser
- the action taken or recommended to address any findings of detrimental action against the discloser.

The principal officer should consult with the AO who allocated the disclosure and any person who was involved in the initial risk assessment for the discloser to ensure that they have all the relevant information to include in the report about potential reprisal action being taken against the discloser or any other person. If a support person was appointed for the discloser that support person should also be consulted.

Providing the report to the discloser

The investigator must, if reasonably practicable and within a reasonable time after preparing their report, give a copy of the report to the discloser. However, the investigator may delete or redact from the copy of the report provided to any party material:

- likely to identify the discloser or another person
- the inclusion of which would contravene a designated publication restriction
- the inclusion of which would result in the copy being a document:
 - that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982*, or
 - having, or being required to have, a national security or other protective security classification, or
 - containing intelligence information.

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

If the discloser has any concerns regarding the process or outcome of the investigation, they should contact the nominated AO.

Providing the report to the Ombudsman

The investigator must also provide a copy of the report to the Ombudsman. The investigator must delete or redact from the report any material:

- likely to identify the discloser or another person
- the inclusion of which would contravene a designated publication restriction

Information given to an official who is the subject of the disclosure

If the allegations in a disclosure have been investigated and the person who is the subject of them is aware of the allegations or that there has been an investigation, that person should be formally advised of the outcome of the investigation as it relates to them. The person is not entitled to be told who made the disclosure except where procedural fairness requires it.



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.

6. 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, the principal officer, 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 AOs 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.

7. Monitoring and Evaluation

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

Each Authorised Officer 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

8. Approval and review

Clearly state the approval and review process to achieve the policy principles.

9. Legal and other authorities

- National Anti-Corruption Commission Act 2022
- Ombudsman Act 1976
- 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

This guideline must be read in conjunction with the [DVA Enterprise Agreement](#).

10. Advice and assistance

Any concerns with or queries relating to this policy may be directed to the [HR Connect](#) unless otherwise noted throughout.

This guideline will be reviewed on implementation of a new DVA Enterprise Agreement or earlier, if required.



11. Version control

This procedure will be reviewed on implementation of a new DVA Enterprise Agreement or earlier, if required.

Date of change	Summary of change	Reason	Approved by
February 2022	Updated into new policy template	Development of new DVA People Policy Framework	Chief Operations Officer
February 2023	Revision	Review and update of PID procedures	
August 2023	Revision	Update of PID procedures following amendments to the Public Interest Disclosure Act 2013	Director, Workplace Relations



Attachment A: Flow Chart: Process for Internal Disclosures under the PID Act

