



Public Interest Disclosure Policy

A handwritten signature in black ink, appearing to read 'Daryl Karp', is positioned above the printed name.

Daryl Karp
Director

June 2021

Due for review month year

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Version control

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V2.3	June 2021	Director	Endorse/Signature	Final

Team responsible for overview and updates of the policy:

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1. General information

The *Public Interest Disclosure Act 2013* (PID Act) commences on 15 January 2014 and builds on practices established to protect the Museum of Australia Democracy at Old Parliament House (MoAD) employees who 'blow the whistle' on suspected breaches of the Code of Conduct.

There is a legislative requirement for MoAD to establish procedures for facilitating and dealing with public interest disclosures relating to MoAD. The purpose of this policy is to meet that statutory requirement and to promote the integrity and accountability of MoAD by:

- encouraging and facilitating disclosure of information by employees about suspected wrongdoing in MoAD
- ensuring that employees who make public interest disclosures are supported and protected from adverse consequences
- ensuring that disclosures by employees are properly investigated and dealt with.

The PID Act is not intended to replace existing processes for dealing with workplace grievances and misconduct, such as bullying and harassment, but to supplement them.

2. Public interest disclosure

What is a public interest disclosure?

A public interest disclosure is a disclosure of information, by a public official, that is:

- a disclosure within MoAD, to an authorised officer, concerning suspected or probable illegal conduct or other wrongdoing (referred to as 'disclosable conduct')
- a disclosure to anybody, if an internal disclosure of the information has not been adequately dealt with, and if wider disclosure satisfies public interest requirements
- a disclosure to anybody if there is substantial and imminent danger to health or safety
- a disclosure to an Australian legal practitioner for purposes connected with the above matters.

Who can make a public interest disclosure?

A disclosure must be made by a 'public official' which includes current and former:

- Australian Government public servants
- Parliamentary Service employees
- Members of the Defence Force
- Staff and Directors of Commonwealth companies
- Statutory Office holders
- Staff of Commonwealth contracted service providers
- Persons deemed to be public officials.

When is it in the public interest for a disclosure to be made?

Employees can disclose information that you believe on reasonable grounds tends to show 'disclosable conduct'. This means conduct by MoAD, a public official or a contracted Commonwealth service provider (in connection with the contract) that:

- contravenes a law
- is corrupt
- perverts the course of justice
- results in wastage of public funds
- is an abuse of public trust
- unreasonably endangers health and safety or endangers the environment
- is misconduct relating to scientific research, analysis or advice
- is maladministration, including conduct that is unjust, oppressive or negligent.

Matters that reflect private or personal interest are generally not matters of public interest, unless they are so fundamental (such as the rights to privacy) that protecting those interests is seen as being in the public interest.

Individual grievances or workplace conflicts would generally be appropriately dealt with by other existing agency and public sector mechanisms than be the subject of investigation under the PID Act.

However, where the nature of a disclosure or potential disclosure suggests that an individual grievance or workplace conflict could be reasonably construed as a matter more broadly representative of a larger or systemic issue (bullying or harassment matters that may be representative of a culture of bullying or harassment), then further investigation under the PID Act might be appropriate.

3. Responsibilities

Director

The Director must take reasonable steps:

- to protect public officials who belong to MoAD from detriment, or threats of detriment, relating to public interest disclosures by those public officials
- to ensure that the number of authorised officers of MoAD is sufficient to ensure that they are readily accessible by public officials who belong to MoAD
- to ensure that public officials who belong to MoAD are aware of the identity of each authorised officer of MoAD. Authorised officers of MoAD is the Deputy Director.

Deputy Director

Where an individual discloses, or proposes to disclose, information to a Deputy Director and the Deputy Director has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the Deputy Director must:

- inform the individual that the disclosure could be treated as an internal disclosure for the purposes of this policy
- explain what the Act requires in order for the disclosure to be an internal disclosure

- 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.

Supervisors

If:

- a public official discloses information to a supervisor
- the supervisor has reasonable grounds to believe that the information concerns, or could concern, one or more instances of disclosable conduct
- the supervisor is not a Deputy Director or the Director, the supervisor must refer the individual to a Deputy Director.

Public officials

A public official must use their best endeavours to assist:

- the Director in the conduct of an investigation
- the Ombudsman in the performance of the Ombudsman's functions.

Commonwealth Ombudsman

The responsibilities of the Ombudsman include:

- assisting the Director, Deputy Director and public officials in relation to the operation of their legislative obligations under the PID Act
- conducting educational and awareness programs relating to the PID Act to the extent to which it relates to MoAD and public officials.

4. Investigating a public interest disclosure

If a disclosure is made to the Director (either directly by the discloser or through the Deputy Director), the Director may choose to allocate another agency to investigate or may choose to appoint an investigator from within MoAD.

In deciding the allocation, the Director must have regard to:

- the principle that MoAD should not handle the disclosure unless some or all of the disclosable conduct with which the information may be concerned (suspected disclosable conduct) relates to MoAD
- such other matters (if any) as the Director considers relevant.

For the purposes of deciding the allocation, the Director may obtain information and make enquiries in order to decide the allocation of investigation, which must be done within 14 days after the disclosure is received.

The Director must not allocate the disclosure to another agency for investigation unless an authorised officer of that agency has consented to the allocation.

The principal officer of the investigating agency must investigate the disclosure, and prepare a report, within 90 days, unless the Commonwealth Ombudsman authorises an extension of time.

The Director may decide not to investigate in particular circumstances where:

- the discloser is not a public official

- the information does not, to any extent, concern serious disclosable conduct
- the disclosure is frivolous or vexatious
- the information is the same, or substantially the same, as information the disclosure of which has been, or is being, investigated as a disclosure investigation
- the information concerns disclosable conduct that is the same, or substantially the same, as disclosable conduct that is being investigated under:
 - a. a law of the Commonwealth other than PID Act
 - b. the executive power of the Commonwealth and it would be inappropriate to conduct another investigation at the same time
- the information concerns disclosable conduct that is the same, or substantially the same, as disclosable conduct that has been investigated under:
 - a. a law of the Commonwealth other than PID Act
 - b. the executive power of the Commonwealth and the principal officer is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation
- the discloser has informed the Director or a Deputy Director that the discloser does not wish the investigation of the internal disclosure to be pursued, and the Director is reasonably satisfied that there are no matters concerning the disclosure that warrant investigation
- it is impracticable for the disclosure to be investigated:
 - a. because the discloser's name and contact details have not been disclosed
 - b. because the discloser refuses or fails, or is unable, to give, for the purposes of the investigation, such information or assistance as the person who is or will be conducting the investigation asks the discloser to give
 - c. because of the age of the information.

On completing an investigation, the Director (or where investigated externally, the principal officer of the external investigating agency), must prepare a report of the investigation.

The report must set out:

- the matters considered in the course of the investigation
- the duration of the investigation
- the investigation findings (if any)
- the action (if any) that has been, is being, or is recommended to be, taken
- any claims made about, and any evidence of, detrimental action taken against the discloser, and MoAD's response to those claims and that evidence
- the investigation is completed when the Director (or where investigated externally, the principal officer of the external investigating agency) has prepared the report of the investigation.

5. Unauthorised disclosures

Regulation 2.1 of the *Public Service Regulations 1999* creates a duty for the purposes of s. 70 of the *Crimes Act 1914* (Crimes Act), which makes it an offence for an APS employee to publish or communicate information, obtained in the connection of their duties, that they have a duty not to disclose. However, a public interest disclosure that is made in accordance with the PID Act is not considered an unauthorised disclosure of information or an offence under s. 70 of the Crimes Act.

In addition, APS employees are required to maintain appropriate confidentiality about dealings with any minister or minister's member of staff. This is an important obligation. Because there are various processes in the APS for raising concerns, including the public interest disclosure scheme, there is no justification for employees to 'leak' information, which can only undermine the essential relationship of trust, particularly with ministers and the government.

6. Confidentiality and protections

It is an offence for a person who has information obtained in the course of conducting a disclosure investigation or in connection with their powers and functions under the PID Act to disclose or use the information. No offence is committed if:

- the disclosure or use of the information is for the purposes of the PID Act or in connection with the person's powers and functions under the PID Act
- the disclosure or use is for the purposes of, or in connection with, taking action in response to a disclosure investigation
- the information has previously been lawfully published and is not intelligence information, or if it is intelligence information, the principal officer for the information has consented to the disclosure or use.

Disclosures should be assessed and investigated discreetly, with a strong emphasis on maintaining confidentiality of both the discloser and any person who is the subject of the disclosure.

All interviews should be conducted in private. In particular, any interviews with the discloser should be arranged discreetly to avoid identification by other staff. Care should be taken to avoid any unauthorised divulging of information. All information obtained, including documents and interview tapes, should be stored securely and be only accessible by those who need to see them. Those who are interviewed should be advised that information about the matter is confidential, that release of information may jeopardise an investigation and that they may be committing an offence if they divulge any information that is likely to identify the discloser.

Disclosers will often be anxious about the prospect of information about their disclosures being revealed. The Deputy Director should assure the discloser that their identity will be protected as much as possible at all times and of the procedures that are in place to ensure confidentiality.

However, they also need to be realistic about MoAD's capacity to protect the discloser's identity in certain circumstances, for example, if it is well known within MoAD that only the discloser could have access to the relevant information. The

discloser must be made aware that, to investigate a matter, their identity will quite possibly be revealed. While confidentiality may not be able to be maintained, the discloser is still afforded protection against reprisal.

7. Keeping records

Good records ensure that all action taken regarding the receipt and processing of a public interest disclosure is reviewable (including by the Ombudsman).

Details about how and when a public interest disclosure was made must be recorded and kept in a secure place. If the disclosure was given verbally, consideration should be given to asking the discloser to sign a record of the disclosure. Subsequent conversations where the disclosure is discussed should also be documented. Each disclosure should be given a unique reference number.

Details of the risk assessment of reprisal, allocation, the investigation, notifications to the discloser and others should also be kept. The records should be factual and free from unnecessary statements such as personal opinion.

Supporting documentation

[APS Values, Employment Principles and Code of Conduct](#)

[Crimes Act 1914](#)

[Public Interest Disclosure Act 2013](#)

[Public Service Act 1999](#)

[Public Service Regulations 1999](#)