

How to make a public interest disclosure

People who are prepared to speak up about suspected wrongdoing in the Commonwealth public sector are vital in ensuring its integrity and accountability. Allegations of wrongdoing made under the *Public Interest Disclosure Act 2013* (PID Act) are known as public interest disclosures (PID).

WHO CAN MAKE A PID?

You must be a current or former 'public official'. This term includes any person who is or was employed or appointed by the Australian Government (including members of the Defence Force and the Australian Federal Police), staff of Commonwealth companies, Commonwealth entities, the Parliamentary Service, statutory officeholders and service providers under contract to the Commonwealth.

WHAT CAN I REPORT?

You can disclose information that you believe on reasonable grounds tends to show 'disclosable conduct'. This means conduct by an agency, 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 or property
- » 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
- » involves the public official abusing his or her position as a public official

- » would give reasonable grounds for disciplinary action against a public official if the conduct was proved.

WHAT IS NOT DISCLOSABLE CONDUCT?

Disagreeing with government policy, action or expenditure does not make it disclosable conduct.

Judicial, ministerial and parliamentary conduct and the proper activities of intelligence agencies are also excluded.

HOW CAN I MAKE A PID?

The focus of the scheme is on disclosure within the Commonwealth public sector. You have a range of avenues within government and in limited circumstances outside government to make a disclosure. If you disclose information outside these circumstances, you will not be covered by the protections of the PID Act.

You can also remain anonymous, in your disclosure to the agency, however the agency has the discretion not to investigate if they cannot contact you to seek further information. The agency will also not be able to notify you about the outcome of your PID unless you provide contact details.

INTERNAL PIDS

You can make a PID about suspected wrongdoing to the agency concerned, either to your supervisor or to an authorised officer appointed by the agency head.

If you are worried about making a PID to the agency concerned, contact the Commonwealth Ombudsman to discuss your options. For matters relating to intelligence agencies contact the Inspector-General of Intelligence and Security (IGIS). In some situations, the IGIS and the Commonwealth Ombudsman can receive and/or investigate a PID about the conduct of another agency.

WHAT INFORMATION SHOULD I PROVIDE?

You do not need to prove that what you suspect is true, as long as you reasonably believe that the information tends to show disclosable conduct. It is the agency's responsibility to investigate the disclosable conduct. However, wherever possible you should be clear and accurate in the information you provide. You should also assist the agency to assess the information by providing any supporting information you have, such as documents, file notes or the names of any people who witnessed the conduct.

WHAT OBLIGATIONS DO I HAVE?

You should:

- » be discreet about your PID and maintain confidentiality throughout the process, unless you are providing information for the purposes of the PID Act
- » provide reasonable assistance as required during the investigation
- » alert your supervisor or the authorised officer to any problems that you may be facing or possible reprisal action in relation to your PID
- » not knowingly making false or misleading claims or statements.

HOW AM I PROTECTED?

If your PID is made in accordance with the PID Act:

- » you are immune from civil, criminal or administrative liability (such as a breach of official secrecy laws or an action for defamation) for making the PID, however you are not protected from the consequences of your own wrongdoing

- » it is a criminal offence for anyone who deals with your PID to disclose information to anyone else that might identify you as the source of the PID without your consent unless:
 - the identifying information is disclosed for the purposes of the PID Act, another Commonwealth law or
 - to assist the Ombudsman or the IGIS perform their PID functions.
- » you are protected from reprisals or threatened reprisals, including injury, dismissal or discrimination between you and other employees
- » you can take action through the Federal Court to seek compensation or an injunction if reprisal action is taken or threatened because of your PID.

Every agency head must put procedures in place for assessing risks of reprisals and protecting staff from victimisation. If you have any fears about reprisal, you should raise them with an appropriate person i.e. authorised officer or supervisor. There are substantial penalties for reprisals or threats of reprisal.

WHAT SUPPORT IS AVAILABLE?

Agencies are required to provide information about support options to a public official who has made a PID, an official who is subject to allegation or other officers who may be requested to provide information to an investigation. You can ask an authorised officer in your agency about the support options available for example a supervisor, peer support mentor, harassment contact officer, welfare officer, or someone in the employee assistance program.

You can talk to your support person about the general situation, process and how you are coping. However you should not provide information that would identify an officer subject to an allegation of wrongdoing or reveal any other confidential information. Your immunity from the consequences of making a PID does not permit you to make further disclosures of the same information elsewhere, unless this meets the criteria for an 'external disclosure' (see below).

WHAT IF I AM UNHAPPY WITH THE OUTCOME?

If you are dissatisfied with the handling of your PID by an agency you have the following options:

- » seek review of the handling of the PID if the agency has a review process
- » make a complaint to the Commonwealth Ombudsman (or IGIS if it relates to an intelligence agency)
- » make an external disclosure if that is permitted under the PID Act (see below).

OTHER PUBLIC INTEREST DISCLOSURES

External disclosure

In limited circumstances where it is not contrary to the public interest, you have a right to make an 'external disclosure' to anyone (except a foreign public official).

You cannot make an external disclosure unless you have already made an internal disclosure and either:

- » the investigation has not been completed and has exceeded the time limit in the PID Act (and no extension of time has been granted by the IGIS or the Commonwealth Ombudsman), or
- » an investigation was done, but you reasonably believe that the investigation was inadequate, and
- » the disclosure is not on balance contrary to the public interest.

It is also important in the event of an external disclosure that no more information is disclosed externally than is reasonably necessary to identify that disclosable conduct has occurred.

Emergency disclosure

In exceptional circumstances you may also make an emergency disclosure outside government if you reasonably believe there is a substantial and imminent danger to health or safety or to the environment (s 26 of the PID Act).

You must not disclose any more information than is reasonably necessary in the circumstances to alert the recipient to the substantial and imminent danger. Before making an emergency disclosure, you should first make an internal PID or wait until an internal disclosure investigation is completed, unless there are exceptional circumstances to justify making an emergency disclosure before then.

In relation to both 'external disclosures' and 'emergency disclosures', disclosing information externally which contains intelligence or sensitive law enforcement information or relates to an intelligence agency is not permitted under the PID Act.

Legal Practitioner disclosure

You may give information to a lawyer for the purposes of seeking legal advice or professional assistance about making a PID, provided you do not disclose intelligence-related matters or sensitive law enforcement information. The lawyer should have a security clearance if you are discussing national security or other protected information.

It is recommended that you seek legal advice before making an external disclosure.

More detailed information on this topic is available in the Agency guide to the Public Interest Disclosure Act 2013 available at www.pid.ombudsman.gov.au.

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