

January 2014

The role of the Ombudsman and the Inspector-General of Intelligence and Security

The Ombudsman, and the Inspector-General of Intelligence and Security (IGIS, in relation to matters of the intelligence agencies), has oversight of the public interest disclosure scheme.

THE OMBUDSMAN

The Ombudsman has a range of powers and functions under the *Public Interest Disclosure Act 2013* (PID Act):

- » determining standards with which agencies must comply
- » receiving notifications of allocations by agencies
- » receiving notifications from agencies where the discretion has been exercised not to investigate or not investigate further
- » receiving, allocating and investigating disclosures about other agencies
- » making decisions about extensions of time for agency investigations
- » providing assistance, education and awareness programs
- » preparing annual reports on the operation of the PID Act.

In addition, the Ombudsman is able to receive and investigate complaints about agencies' handling of public interest disclosures under the *Ombudsman Act 1976*. The Ombudsman may also use own motion powers under the *Ombudsman Act 1976* to investigate issues surrounding the handling, or management, of PIDs by agencies.

The Ombudsman is also required to handle public interest disclosures made about its own public officials.

DETERMINING STANDARDS

The Ombudsman has the power to determine PID standards in relation to particular matters covered by the Act. The PID standards are legislative instruments and are available at www.comlaw.gov.au.

Agencies must comply with the Ombudsman's PID standards when:

- » preparing procedures for dealing with internal disclosures made under the Act
- » investigating disclosures under the Act
- » preparing reports of investigations
- » providing information to the Ombudsman for the purposes of annual reporting.

RECEIVING, ALLOCATING AND INVESTIGATING DISCLOSURES

A public official may make a disclosure directly to the Ombudsman about wrongdoing relating to any agency if they believe on reasonable grounds that it would be appropriate for the Ombudsman to investigate the matter. However, if the matter relates to an intelligence agency the person should make the disclosure directly to the IGIS.

Unless special circumstances exist, the Ombudsman may allocate a disclosure it receives from a public official to another appropriate agency, including the agency the disclosable conduct relates to or the agency the public official belongs to. This is consistent with the allocation principle that an agency should not handle a disclosure unless some or all of the disclosable conduct relates to the agency.

When investigating a disclosure the Ombudsman may, where appropriate, use the general investigative powers under the *Ombudsman Act 1976*. The broad powers include requiring the production of documents or other written records, requiring questions to be answered and examining witnesses on oath or affirmation.

MAKING DECISIONS ABOUT EXTENSIONS OF TIME

Agencies have until 90 days after the disclosure has been allocated to complete their investigation, including preparation of the investigation report. The Ombudsman (or the IGIS in the case of intelligence agencies) can grant extensions of time either on request from a discloser or agency, or, alternatively, on their own initiative. If extensions are granted or made, the Ombudsman (or IGIS) must inform the discloser of the decision and reasons for the extension.

PROVIDING ASSISTANCE, EDUCATION AND AWARENESS PROGRAMS

The Ombudsman's functions include assisting principal officers, authorised officers and public officials in relation to the PID Act, and conducting education and awareness programs. Information sheets and guides are available on the Ombudsman's website. Agencies and disclosers (both potential and actual) are also able to email and phone the Ombudsman's office if they have queries about the operation of the PID Act. The Ombudsman's office also provides presentations on the operation of the PID scheme to agencies and other stakeholders. Organisations and agencies can request a presentation using the *Request a guest speaker* form available on the Ombudsman's website at www.pid.ombudsman.gov.au.

PREPARING ANNUAL REPORTS

The Ombudsman must prepare a report to parliament each year on the operation of the PID Act. This report must include the following information for the financial year from agencies:

- » the number of public interest disclosures received by authorised officers of the agency
- » the kinds of disclosable conduct to which those disclosures relate
- » the number of disclosure investigations the agency conducted
- » the actions that the agency has taken in response to recommendations in reports relating to those disclosure investigations
- » the number and nature of the complaints made to the Ombudsman about the conduct of agencies in relation to public interest disclosures
- » information about the Ombudsman's performance of its functions and the IGIS's performance of its functions.

ASSISTING THE OMBUDSMAN

An agency must provide information requested by the Ombudsman for the purposes of preparing the Ombudsman's annual report under the PID Act. Agencies need to have regard to any PID standards set by the Ombudsman when providing information.

More broadly public officials are required to use their best endeavours to assist the Ombudsman in the performance of the Ombudsman's function under the PID Act. This includes assistance with the Ombudsman's role in receiving notifications of allocation of public interest disclosures, assessing requests for extension of time for investigations and receiving notification and reasons from agencies where discretion not to investigate or not investigate further have been exercised. Similar requirements apply to intelligence agencies assisting the IGIS under the PID Act.

INVESTIGATIONS UNDER THE OMBUDSMAN ACT 1976

One of the Ombudsman's main functions under the *Ombudsman Act 1976* is to investigate complaints made about the actions and decisions of government agencies. This can include complaints about how an agency has handled a public interest disclosure. The Ombudsman may, however, exercise discretion not to investigate such a complaint.

The Ombudsman also has the power to conduct own motion investigations. The scope of such investigations commonly relates to systemic issues and may include how agencies have undertaken their responsibilities under the PID Act.

THE INSPECTOR GENERAL OF INTELLIGENCE AND SECURITY

The IGIS performs a similar role as the Ombudsman in respect to the six intelligence agencies: the Australian Security Intelligence Organisation, Australian Secret Intelligence Service, Office of National Assessments, Defence Imagery and Geospatial Organisation, Defence Intelligence Organisation and Australian Signals Directorate. These roles include:

- » receiving notifications of allocations by intelligence agencies
- » receiving notifications from intelligence agencies where the discretion has been exercised not to investigate or not investigate further
- » receiving, allocating and investigating disclosures about intelligence agencies
- » making decisions about extensions of time for intelligence agency investigations
- » providing assistance, education and awareness programs
- » assisting the Ombudsman in relation to the performance of the Ombudsman's functions under the PID Act.

The IGIS can use investigative powers under the *Inspector-General of Intelligence and Security Act 1986* when investigating disclosures under the PID Act, and can conduct own motion investigations. More information about the role and functions of the IGIS are at www.igis.gov.au.

CONTACT THE COMMONWEALTH OMBUDSMAN 1300 362 072

PID INFORMATION LINE	02 6276 3777
FAX	02 6276 0123
EMAIL	PID@ombudsman.gov.au
WEB	www.pid.ombudsman.gov.au
POST	GPO Box 442, Canberra ACT 2601

