

October 2013

The *Public Interest Disclosure Act 2013* – what's it all about?

The *Public Interest Disclosure Act 2013* (PID Act) which commences on 15 January 2014 promotes integrity and accountability in the Australian public sector by encouraging the disclosure of information about suspected wrongdoing, protecting people who make disclosures and requiring agencies to take action.

The PID Act builds on practices established to protect Australian Public Service (APS) employees who 'blow the whistle' on suspected breaches of the APS Code of Conduct. Other entities connected with the Australian Government are covered by the PID Act, and new avenues of reporting suspected wrongdoing are available. The emphasis of the scheme is on disclosures being made and investigated within government. 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.

WHAT IS THE PURPOSE OF THE PID ACT?

The purpose of the Act is to promote the integrity and accountability of the Commonwealth public sector by:

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

WHO CAN MAKE A DISCLOSURE?

A person must be a current or former 'public official' to make a disclosure. This broad term includes Australian Government public servants and parliamentary service employees, members of the Defence Force, staff and directors of Commonwealth companies, statutory office holders and staff of Commonwealth contracted service providers. A person may also be deemed by an authorised officer to be a public official.

WHAT AGENCIES ARE SUBJECT TO THE PID ACT?

Disclosures may be made about suspected wrongdoing not only in Australian Government departments, executive and statutory agencies, but in a wide range of other entities and office holders associated with the Australian Government. These include Commonwealth companies and authorities, courts, statutory office holders and providers of goods and services under contract to the Commonwealth.

DOES THE PID ACT APPLY TO ALL DISCLOSURES OF WRONGDOING?

Disclosures of suspected wrongdoing made before 15 January 2014 are not covered by the PID Act. However, a disclosure made after that date can include conduct which occurred at any time.

WHAT TYPE OF WRONGDOING CAN BE REPORTED?

A public official can disclose information that they 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 Commonwealth 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.

Disagreement with government policy, action or expenditure does not amount to disclosable conduct. Judicial conduct and the proper activities of intelligence agencies are also excluded.

HOW IS A PERSON WHO MAKES A DISCLOSURE PROTECTED?

The identity of a person who makes a disclosure will be kept confidential as far as practicable. It is an offence to provide identifying information about a person who makes a disclosure without their consent unless authorised by the PID Act. They also have immunity from civil, criminal and administrative liability (including disciplinary action) for making the disclosure. It is a criminal offence to take or threaten to take a reprisal, such as discriminatory treatment, termination of employment or injury, against someone because they make a disclosure.

To gain the protections of the PID Act, a public official must comply with the Act. This means that if they disclose wrongdoing to someone who is not authorised to receive it, their disclosure will not be covered.

WHO CAN A DISCLOSURE BE MADE TO?

Every agency must appoint authorised officers to handle public interest disclosures. A public official may also make a disclosure to their supervisor, who must pass it to an authorised officer. In appropriate cases, a disclosure may be made directly to the Inspector-General of Intelligence and Security (in relation to an intelligence matter) or to the Commonwealth Ombudsman (in relation to other government agencies), or to an investigative agency prescribed in rules made under the PID Act. In limited circumstances, an external disclosure outside government, or an emergency disclosure in the case of substantial and imminent danger, is permitted.

HOW DOES THE PID ACT INTERACT WITH OTHER LEGISLATION?

The PID Act complements other investigative and complaint schemes that apply to the Australian public sector. For example, an allegation that a public servant has breached the APS Code of Conduct can be investigated under the *Public Service Act 1999*. Complaints about agency action can still be made to the Commonwealth Ombudsman or, in the case of intelligence agencies, to the Inspector-General of Intelligence and Security. Evidence of a criminal offence may be referred to police.

For further information about the *Public Interest Disclosure Act 2013*, see www.pid.ombudsman.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 |

