

# Public Interest Disclosure

This page contains information on the [Public Interest Disclosure Act 2013 \(Cth\)](#) ('PID Act') which commenced on 15 January 2014.



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## Background to the PID Act

Before the PID Act came into existence the Commonwealth was the only jurisdiction in Australia that did not have legislation dedicated to facilitating 'whistleblowing' and to protecting those that make such disclosures. The PID Act recognises the importance of exposing wrongdoing in the public sector. It provides broad protections for people that make reports of serious wrongdoing, provides legal remedies if those individuals suffer reprisals as a result of those reports and creates a standardised framework for how this type of disclosure must be handled, investigated and reported on.

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## Who can make a disclosure?

A current or former public official can make disclosures under the PID Act. The term 'public official' is quite broad and includes current and former APS employees, 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 can also be deemed to be a 'public official' by an authorised officer of the NBA (or other agency) who believes on reasonable grounds that the individual has information that concerns disclosable conduct under the PID Act (section 70).

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## Who is subject to the PID Act?

Disclosures may be made about suspected wrongdoing in Australian Government departments, executive and statutory agencies, as well as 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.

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## Types of wrongdoing that can be disclosed

A public official can disclose conduct by an agency, public official or a contracted Commonwealth service provider (in connection with the Commonwealth contract) that they believe on reasonable grounds:

- > contravenes the law;
- > is corrupt;
- > perverts the course of justice;
- > results in the wastage of public funds or property;
- > is an abuse of the public interest;
- > 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.

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## Types of conduct that is not disclosable

Sections 31, 32 and 33 of the PID Act specify conduct that does not fall under the Act. This includes where:

- > a person disagrees with government policies;
- > the conduct concerns members of Parliament whom are not covered by the PID Act. However, the departments of the Parliament and their employees are covered;
- > conduct connected with courts or Commonwealth tribunals ; and,
- > conduct connected with intelligence agencies.

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## How to make a disclosure and be protected by the PID Act

Note that there are no formal requirements that apply when making a disclosure under the PID Act. You can make a disclosure in writing or orally with or without reference to the PID Act.

### **Internal PID disclosures**

An internal disclosure can be made under the PID Act to an NBA authorised officer (including the General Manager), a supervisor/manager (who will pass the disclosure on to an authorised officer) or an authorised officer of the Commonwealth Ombudsman, if you believe on reasonable grounds that it would be appropriate for the Ombudsman to investigate.

### **External disclosures**

An external disclosure is a disclosure to anyone that is not covered by internal disclosures other than a foreign public official. There are only limited circumstances where the PID Act will protect a person making an external disclosure. As there are specific criteria regarding these types of disclosures under the PID Act and there may be legal implications for you in making such a disclosure (for example to the media), it is recommended that you seek independent legal advice. The Ombudsman anticipates these types of disclosures will be rare.

### **Emergency disclosures**

An emergency disclosure is a disclosure to any person (not covered by internal disclosures) other than a foreign public official where the discloser believes there is a substantial and imminent danger to the National Blood Authority

health or safety of one or more persons or the environment. For an emergency disclosure to be protected under the PID Act the discloser must also satisfy certain requirements which are set out in section 26 of the PID Act.

It is also a condition for external and emergency disclosures that the information does not include any sensitive intelligence information.

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## What protections are available under the PID Act?

There are four key protections for public interest disclosers, they are:

1. substantial immunity from liability for disclosing;
2. protection of actual or threatened reprisals;
3. restrictions on revealing the identity of the discloser; and,
4. adverse action provisions of the *Fair Work Act 2009* apply.

It is important to note that to be protected an individual making a disclosure must normally make it to an authorised person and they cannot knowingly make a false or misleading statement. The individual making the disclosure must also honestly believe on reasonable grounds that the information tends to show disclosable conduct. This means that you must have something tangible to support your belief rather than a mere assertion or suspicion. If you are unsure then you should consider obtaining independent legal advice first.

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## Contact information for Authorised Officers

Under the PID Act, each agency must appoint authorised officers to handle public interest disclosures. Disclosures can also be made to a supervisor/manager, who must pass it to an authorised officer. For the purposes of this Act the following staff have been appointed as authorised officers:

**Name:** Michael Stone

**Phone:** 02 6151 5003

**Name:** Peter O'Halloran

**Phone:** 02 6151 5007

**Name:** Sandra Cochrane

**Phone:** 02 6151 5005

**General email address:** [PID@blood.gov.au](mailto:PID@blood.gov.au)

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## Further information

Further information regarding the PID Act can be found on the Ombudsman's website at <http://www.ombudsman.gov.au/pages/pid/>.

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