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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.

WHO CAN MAKE A PUBLIC INTEREST DISCLOSURE?

You must be a current or former 'public official'. This is a broad term which 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 authorities and statutory agencies, 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
- » 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.

WHAT IS NOT DISCLOSABLE CONDUCT?

Disagreeing with government policy, action or expenditure does not make it disclosable conduct. Judicial conduct and the proper activities of intelligence agencies are also excluded.

HOW CAN I MAKE A PUBLIC INTEREST DISCLOSURE?

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

You can make your disclosure in person, by telephone or in writing, including by email. Agencies may have an online form for disclosures. You can remain anonymous, although 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 their handling of your disclosure.

INTERNAL PUBLIC INTEREST DISCLOSURE

You can report the suspected wrongdoing to the agency concerned, either to your supervisor or to an authorised officer appointed by the agency head. If you believe on reasonable grounds that it is appropriate for the Inspector-General of Intelligence and Security (IGIS) (in the case of intelligence agencies) or the Ombudsman (for other agencies) to investigate instead, you can make your disclosure directly to them.

OTHER PUBLIC INTEREST DISCLOSURES

In limited circumstances where it is not contrary to the public interest, you have a right to make a public interest disclosure to anyone outside government if you have first made an internal disclosure and either the investigation has exceeded the time limit or you reasonably believe that the investigation or its outcome was inadequate.

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.

You must not disclose intelligence-related matters or sensitive law enforcement information on either of these grounds, and you may not make a disclosure to a foreign public official. You must also not disclose any more information than is reasonably necessary in the circumstances.

LEGAL DISCLOSURE

You may give information to a lawyer for the purposes of seeking legal advice or professional assistance about making a disclosure, 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.

WHAT INFORMATION SHOULD I PROVIDE?

You do not need to prove that what you suspect is true, as long as you honestly and reasonably believe it involves disclosable conduct. It is the agency's responsibility to investigate. However, you should provide any supporting information you have, such as documents, file notes or the names of any people who witnessed the conduct or may be able to verify what you are saying.

HOW AM I PROTECTED?

If your disclosure is made in accordance with the Act:

- » you are immune from civil, criminal or administrative liability (such as a breach of official secret laws or an action for defamation)
- » it is a criminal offence to disclose your identity without your consent (subject to some exceptions)
- » you are protected from reprisals or threatened reprisals, including injury, dismissal or discrimination between you and other employees
- » you can take action for reinstatement if your employment was terminated because of your disclosure.

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 your agency. There are substantial penalties for reprisals.

WHERE CAN I FIND OUT MORE?

Each agency will have detailed procedures on handling public interest disclosures. You should not discuss the details of the matter with anyone who does not need to know, but you may find it helpful to talk about the process to appropriate people such as your supervisor or someone in an employee assistance program.

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