

s 37(2)

12. PID handling complaints

The PID Act provides that complaints may be made to the Ombudsman under the Ombudsman Act about the way:

- a disclosure is allocated (or a refusal to allocate a disclosure): Note 2 in s 42 of the PID Act
- a disclosure is investigated (or a refusal to investigate a disclosure): Note in s 46 of the PID Act
- additional obligations in the PID Act are complied with (or non-compliance with the additional obligations): Note in s 58 of the PID Act.

The role of our Office in assessing a PID handling complaint is to consider whether:

- the agency's handling of the disclosure was consistent with its obligations under the PID Act
- the agency appropriately considered relevant information in making a decision
- the agency's actions and decisions were reasonably open to it.

We do not re-assess or re-investigate the allegations made in the disclosure.

As with general parliamentary complaints, our Office does not have the power to direct an agency to take a particular course of action in respect of a disclosure. However, if we consider that it is appropriate to do so, we can make comments and suggestions to the agency under the Ombudsman Act to improve its administration of the PID scheme or to revisit its assessment/investigation of the disclosure.

12.1 Assessing a complaint

When assessing PID handling complaints, IOs should have regard to the general principles in the Office's [Parliamentary Complaint Handling Procedures](#), s 37(2)

The following information may be relevant to the IO's assessment of a PID handling complaint:

- the disclosure
- the AO's assessment
- a copy of the agency's decision not to investigate the disclosure under s 48 of the PID Act

- a copy of the agency's investigation report under s 51 of the PID Act (often there will be redactions to the discloser's copy of the report and it may be necessary to request a copy without redactions from the agency)
- correspondence between the discloser/complainant and the agency in the course of the agency's handling of the disclosure
- details of the discloser's/complainant's concerns about the agency's handling of the disclosure.

12.2 Common complaints

Investigation under another law or procedure

A disclosure investigation may result in a recommendation that an investigation be conducted under another Commonwealth law or procedure (s 47(3) of the PID Act). As a result, the investigation report under s 51 of the PID Act may be quite brief. If a discloser complains about a decision under s 47(3), our Office can consider whether that decision was reasonably open to the agency to make.

If the discloser complains about the outcome of the subsequent investigation, we may not be able to investigate that issue. For example:

- APS Code of Conduct investigations – our Office cannot investigate employment-related matters. The discloser or the subject of the disclosure may be able to request a review by the Merit Protection Commissioner.
- Investigations under the *Defence Force Discipline Act 1982* – s 19C(5) of the Ombudsman Act precludes our Office from investigating such matters.

However, our Office does have jurisdiction in respect of investigations under Part V of the AFP Act.

Allegations of reprisal

A complainant may raise concerns with our Office about reprisal action having been taken against them because of a disclosure. Ultimately, it is not our role to determine whether an offence may have been committed under the PID Act (i.e. whether a reprisal has in fact been taken within the meaning of the PID Act). However, we may consider whether the agency took reasonable steps to investigate and respond to any allegations of reprisal.

The IO may also advise the complainant to seek independent legal advice about the options that may be available to them to pursue their reprisal claim, noting that the Federal Court and Federal Circuit Court have the power to make orders for compensation and reinstatement if satisfied that a reprisal has been taken.

Delay in allocating a disclosure or completing a disclosure investigation

The PID Act provides that:

- AOs should use their best endeavours to finalise an allocation decision within **14 days** of receipt of the disclosure: s 43(5).
- Investigations under the PID Act must be completed within **90 days** after allocation of the disclosure: s 52(1). An investigation is completed when the principal officer (or their delegate)

has prepared a report of the investigation under s 51. An agency may request an extension of time from our Office under s 52(3) of the PID Act.

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Outcome of a disclosure investigation (including findings and recommendations)

Our Office's [Agency Guide to the Public Interest Disclosure Act 2013](#) at 2.7.7.1 outlines some of the circumstances in which a disclosure investigation may be considered inadequate, including where:

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The complainant should provide details of their complaint/specific concerns about the agency's handling of the disclosure for the IO's assessment. However, broadly speaking, it may be relevant for the IO to consider whether:

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12.3 Deciding not to investigate a complaint

As with general parliamentary complaints, the IO may exercise the discretion in s 6 of the Ombudsman Act not to investigate a PID handling complaint. s 37(2)

12.4 Investigating a complaint

Agency contact arrangements

IOs should use one of the dedicated PID email addresses s 37(2) to communicate with the discloser/complainant and the agency about a PID handling complaint.

Our contact with the agency should be limited to the area that deals with PID matters (or to any person nominated by the agency's principal officer) s 37(2) If unsure, the IO should contact the PID Team to confirm agency contact arrangements.

Requests for information

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s. 22 - Irrelevant material