

Attachment A

Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Whistleblower Protections in the Corporate, Public and not-for Profit Sectors

Answers to Questions on Notice following public hearing on 28 April 2017

The Office of the Commonwealth Ombudsman (OCO) provides answers to the following questions on notice in relation to the committee's inquiry into whistleblower protections:

1. Public interest disclosures

At the public hearing on 28 April 2017, the OCO informed the committee that once a public interest disclosure (PID) is allocated for investigation it is usually referred back to an agency to be dealt with.

a) What criteria does OCO use when deciding to either investigate the public interest disclosure itself, or refer the investigation back to the agency?

Each disclosure that the OCO receives is assessed on its merits. In deciding whether to investigate a matter itself or to refer it back to the relevant agency, the OCO has regard to the object and purpose of the *Public Interest Disclosure Act 2013* (PID Act). The OCO champions the object and purpose of the PID Act that agencies handle and investigate disclosures relating to their Agency in the majority of cases. Unless extenuating circumstances arise, such as a significant risk to the discloser or a conflict of interest, the OCO refers a PID back to the relevant Agency for investigation.

b) When OCO refers a public interest disclosure investigation back to an agency, how does OCO ensure the confidentiality of the discloser?

Prior to allocating a PID back to an Agency the Authorised Officer (AO) from the OCO will first contact the discloser advising them of the decision. The AO will seek the discloser's consent to provide the relevant agency with their name and contact details.

The contact details and identifying information of a discloser will only be provided to an Agency if the discloser consents. If the discloser does not consent, the AO will inform the agency that the discloser is anonymous and will not provide any identifying details to the agency.

2. Reprisals relating to public interest disclosures

At the public hearing on 28 April 2017, OCO informed the committee that in the past financial year there were 612 PIDs made, and 15 reported instances of actual or potential reprisals related to a PID.

a) What is OCO's process once an allegation of reprisal related to a disclosure is received?

If a discloser alleges that they are subject to reprisal action, the OCO advises the discloser to use the protections of the PID Act, namely: seek legal advice, contact the police, submit an application to the Federal Court or the Federal Circuit Court or contact the PID risk assessment officer within the agency.

The OCO is not a law enforcement agency, nor can our Office provide a person with available remedies under the PID Act. The OCO does not have the jurisdiction to investigate whether or not reprisal action has occurred.

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b) Since the introduction of the *Public Disclosure Act 2013* (PID Act), how many investigations into an allegation of reprisal related to a public interest disclosure has OCO referred back to an agency?

The OCO has not referred any investigations solely relating to an allegation of reprisal back to an agency. There has been one instance where a discloser made a PID predominantly about an allegation of reprisal action related to a previous public interest disclosure. The OCO referred this back to the relevant agency as a PID for investigation.

c) Noting the high number of public interest disclosures in Defence, since the introduction of the PID Act, how many investigations into an allegation of reprisal related to a public interest disclosure has OCO referred back to Defence?

The OCO has not referred any investigations into an allegation of reprisal related to a PID back to the Department of Defence.

d) Since the introduction of the PID Act, has OCO ever conducted an investigation into an allegation of reprisal related to a public interest disclosure?

The OCO does not have jurisdiction to conduct an investigation into whether an allegation of reprisal has occurred. As such, the OCO has not conducted an investigation into an allegation of reprisal of reprisal related to a public interest disclosure.

e) When an allegation of reprisal associated with a disclosure has been referred back to an agency for investigation:

i. how does OCO monitor the progress of an agency's investigation into an allegation of reprisal?

The OCO does not have jurisdiction to monitor an Agency's investigation into an allegation of reprisal.

ii. how does OCO satisfy itself that the investigation into an allegation of reprisal by the agency was conducted in accordance with section 20 of the PID Act?

See answer to (e)(i).

iii. have there been any instances where a person has subsequently complained to OCO about an agency's handling of an investigation into an allegation of reprisal (as distinct from a complaint solely about the handling of a public interest disclosure)?

No. The OCO has not received any complaints from disclosers regarding an agency's handling of an investigation into an allegation of reprisal where the OCO has referred it to an Agency for investigation (refer to answer to question (2)(a)).

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- iv. If yes to question e) iii, what processes did OCO undertake in response to complaints about an agency's investigation into an allegation of reprisal and what have been the outcomes?**

See answer to (e)(iii).