



## Whistleblowing on environmental harm in Australia

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*This factsheet was last updated on 21 June 2024*

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### What is whistleblowing?

Whistleblowing is where a person discloses information about the wrongdoing of an individual, group or corporation. Whistleblowers are usually a person employed by or formerly employed by a public sector or private entity seeking to report the misconduct or breach of the law by that entity (or an individual/group within the entity).

For the purposes of accessing whistleblowing rights and protections, you will only qualify if you fall within the definition of a ‘whistleblower’ under the relevant law. For example, you must meet the criteria of an ‘eligible whistleblower’<sup>1</sup> under the [Corporations Act 2001 \(Cth\)](#) (**Corporations Act**) and strictly follow its procedures to access its rights and protections for whistleblowers.

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<sup>1</sup> [Corporations Act 2001 \(Cth\)](#) Part 9.4AAA, s 1317AAA (**‘Corporations Act’**).

## Is whistleblowing illegal?

Broadly speaking, whistleblowing is authorised by certain laws such as the **Corporations Act** and public interest disclosure laws (**PID Laws**) and offers protection against some legal actions against the whistleblower, but only where the requirements of those laws are very carefully complied with by that whistleblower. Australia does not possess any uniform or comprehensive whistleblower protection or **PID Laws** so there may be instances where whistleblowing is unlawful and unwise.

N.B. Since the laws on whistleblowing are complex, EDO recommends that you seek independent legal advice before making any public disclosures, even if you are feeling impatient and frustrated.

## Consequences of whistleblowing

Being a whistleblower or making a public interest disclosure (**PID**) essentially exposes any wrongdoing a company or government agency has committed, which can negatively impact the business and its employees – including yourself. A **PID** can have immediate and ongoing effects on your employment and personal life unless the disclosure is carried out very carefully and in full compliance with **PID Laws**.

For example, if you publicise a report in relation to environmental harm caused at your workplace that may breach the terms and conditions of your employment contract. Employment termination, isolation from work colleagues, personal threats and ongoing legal action against a whistleblower have been reported following whistleblowers going public without the protections of the **PID Law**.<sup>2</sup> It is therefore important to first consider any alternative pathways before whistleblowing.

## Alternatives to whistleblowing

### Freedom of Information or Right to Information applications

If the information is not already publicly available, you may be able to lawfully obtain the information and then lawfully share it publicly. Pathways include submitting a Freedom of Information (**FOI**) application or Right to Information (**RTI**) application to government agencies or Ministers. Any person or organisation may make an application, however the process can be lengthy and there are exclusions and exemptions. Your access to some documents may be limited, as they may contain confidential information, or be ‘against the public interest’ if released.

Before making a formal FOI or RTI application, you should contact the relevant agency you are seeking information from, as the information may already be available online or for purchase on request.

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<sup>2</sup> The Sydney Morning Herald, ‘ASIC ‘asleep on the job’ over CBA’ (2013)  
<https://www.smh.com.au/business/asic-asleep-on-the-job-over-cba-20130805-2ra39.html>.

Read: EDO's factsheets on accessing government information in your state available via the legal resources page on our website: <https://www.edo.org.au/legal-resources/>

## **Parliamentary privilege**

Parliamentary privilege refers to special legal rights which protect the discussions of committees and their members within the Houses of Parliament.<sup>3</sup> Members of Parliament are protected while taking part in parliamentary proceedings.<sup>4</sup>

This allows members of Parliament to discuss important concerns or conduct investigations without interference, that may otherwise be considered defamation or protected under privacy or confidentiality laws.<sup>5</sup>

If a whistleblower provides documents or other hard evidence to a member of parliament, the member may decide to raise the concern during a parliamentary proceeding. The protections granted to the member, known as parliamentary privilege, may, under certain circumstances, also apply to the whistleblower.<sup>6</sup> These protections are conditional, depending on whether the whistleblower has already disclosed the information to an appropriate regulator and if the disclosure is in the public interest. Due to the complexities of the necessary conditions, seeking legal advice before taking any action is advisable.

## **Making anonymous complaints to state departments**

Some government departments provide an option to submit feedback or an anonymous complaint. The complaint can be in relation to a serious wrongdoing or improper conduct of an officer of the department, or environmental harm.

Anonymous reporting allows for the issue to come to the attention of the Department, while maintaining the privacy and security for the person making the complaint. This provides a safer, more accessible option for people to voice their concerns without feeling like they are risking their personal lives or possible legal action.

Only the states of Queensland, New South Wales and Victoria currently allow for anonymous complaints relating to department misconduct or PIDs.

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<sup>3</sup> Australia Parliament House, 'Infosheet 5 – Parliamentary Privilege'.

<sup>4</sup> *Parliamentary Privileges Act 1987* (Cth), s 16(1).

<sup>5</sup> *Parliamentary Privileges Act 1987* (Cth), s 16.

<sup>6</sup> Australian Securities and Investment Commission, 'Whistleblower rights and protections', Information Sheet 238, <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/whistleblower-rights-and-protections/>

Visit: The following State resources for more information of anonymous reporting and complaints:

- QLD: [Department of Environment and Science](#)
- NSW: [Department of Planning and Environment](#)
- VIC: [Department of Energy, Environment and Climate Action](#)

## Which laws protect whistleblowers?

Generally speaking, the **Corporations Act** governs whistleblowing about actions of public companies, whereas the federal/state whistleblowing or PID laws address whistleblowing by public sector employees in the public sector.

### Public Sector

#### Federal:

*Public Interest Disclosure Act 2013 (Cth)*

#### State and Territory:

- ACT: *Public Interest Disclosure Act 2012*
- NSW: *Independent Commission Against Corruption Act 1988; and Public Interest Disclosures Act 2022*
- NT: *Independent Commissioner Against Corruption Act 2017;*
- QLD: *Public Interest Disclosure Act 2010*
- SA: *Public Interest Disclosure Act 2018*
- TAS: *Public Interest Disclosures Act 2002*
- VIC: *Protected Disclosure Act 2012 ; Public Interest Disclosures Act 2012*
- WA: *Public Interest Disclosure Act 2003*

### Private Sector

#### Federal, State & Territory:

*Corporations Act 2001 (Cth)*

Visit: The Australian Securities & Investment Commission's [Whistleblowing](#) page to read more about the *Corporations Act 2001 (Cth)*; and

The following Commonwealth, State and Territory resources on whistleblowing:

- [Commonwealth](#)
- [Australian Capital Territory](#)

- New South Wales: [ICAC](#) and [Ombudsman](#)
- [Northern Territory](#)
- [Queensland](#)
- [South Australia](#)
- [Tasmania](#)
- [Victoria](#)
- [Western Australia](#)

## Blowing the whistle on environmental matters

All jurisdictions, except for NSW and the Northern Territory, expressly provide for PIDs to be made regarding conduct causing direct environmental harm. There are slight variations among the jurisdictions in how environmental harm is defined and by whom it must be caused. The table below describes the key differences in legislative protections across jurisdictions.

Jurisdiction	Who can make a PID?	Direct and indirect environmental harm
	A public official. <sup>7</sup>	A PID may concern conduct by an agency, public official or contracted service that results in a danger to the environment, or results in, or increases, a risk of danger to the environment. <sup>8</sup>
<b>Federal</b>	An employee, officer of, or contractor to a public company and certain other persons.	A disclosure may be made concerning the corporation or various persons connected with the corporation breaching certain Commonwealth laws including amongst others, the <b>Corporations Act</b> , or any provision of a Commonwealth Act punishable by a term of imprisonment of 12 months or more. <sup>9</sup>
<b>ACT</b>	Any person. <sup>10</sup>	A PID may concern an action by a public official or authority that results in a substantial and specific danger to public health or safety, or the environment. <sup>11</sup>

<sup>7</sup> *Public Interest Disclosure Act 2013* (Cth), s 69 .

<sup>8</sup> *Public Interest Disclosure Act 2013* (Cth), s 29(1), item 9.

<sup>9</sup> *Corporations Act 2001* (Cth) s 1317AA .

<sup>10</sup> *Public Interest Disclosure Act 2012* (ACT), s 14.

<sup>11</sup> *Public Interest Disclosure Act 2012* (ACT), s 8(1)(b).

<b>NSW</b>	A public official. <sup>12</sup>	The legislation does not expressly provide for PIDs to be made about environmental harm.
<b>NT</b>	Any person can make a 'protected communication' <sup>13</sup>	The legislation does not expressly provide for PIDs to be made about environmental harm.
<b>QLD</b>	Any person <sup>14</sup> or public officer. <sup>15</sup>	A PID may concern information about a substantial and specified danger to the environment. <sup>16</sup>
<b>SA</b>	Any person.	A PID may concern information that raises a potential issue of a substantial risk to the environment or the health or safety of the public. <sup>17</sup>
<b>TAS</b>	A public officer or contractors of public bodies. <sup>18</sup>	A PID may concern improper conduct of a public officer or authority that is a danger to the environment. <sup>19</sup>
<b>VIC</b>	Any person. <sup>20</sup>	A PID may concern improper conduct of a public officer or body that is a substantial risk to the environment. <sup>21</sup>
<b>WA</b>	Any person. <sup>22</sup>	A PID may concern the act or omission of a public officer or body that involves a substantial and specific risk of harm to the environment. <sup>23</sup>

## Questions your lawyer might ask you

The following questions may be asked by your lawyer to determine whether the legislative protections for whistleblowers apply to you or are appropriate and safe for you:

- **Have you considered other approaches?**

Such as using FOI, or anonymous complaints to government, or seeking to inform a parliamentarian and gain the protection of parliamentary privilege?

- **Does the body or company or you are complaining in relation to have any policies on whistleblowing or a whistleblower officer?**

You may be able to speak to that officer in confidence.

<sup>12</sup> *Public Interest Disclosure Act 2022* (NSW), s 25.

<sup>13</sup> *Independent Commissioner Against Corruption Act 2017* (NT), s 92.

<sup>14</sup> *Public Interest Disclosure Act 2010* (QLD), s 12.

<sup>15</sup> *Public Interest Disclosure Act 2010* (QLD), s 13.

<sup>16</sup> *Public Interest Disclosure Act 2010* (QLD), s 13(1)(d).

<sup>17</sup> *Public Interest Disclosure Act 2018* (SA), s 4.

<sup>18</sup> *Public Interest Disclosures Act 2002* (TAS), s 6.

<sup>19</sup> *Public Interest Disclosures Act 2002* (TAS), s 3.

<sup>20</sup> *Public Interest Disclosure Act 2012* (VIC), s 9.

<sup>21</sup> *Public Interest Disclosure Act 2012* (VIC), s 4(1)(b)(viii).

<sup>22</sup> *Public Interest Disclosure Act 2003* (WA), s 5.

<sup>23</sup> *Public Interest Disclosure Act 2003* (WA), s 3.

- **Are you a current or former employee of the company or organisation that your proposed PID is about?**  
This includes being an officer of the company, a contractor, a trustee or a spouse of any of these classes of people.
- **Have you identified who you need to make the PID to?**  
Check the relevant PID Law or **Corporations Act**.
- **Do you have reasonable grounds to suspect the information contained in your PID concern misconduct or an improper state of affairs?**
- **Have you identified the breach or misconduct?**  
Such as breaching the *Corporations Act 2001* (Cth) or other regulatory laws, or practices that threaten public or financial safety.
- **Do you have evidence of the breach or misconduct?**  
This can include documents, correspondence or evidence of transactions.
- **Is anyone threatening you relating to your potential disclosure?**  
It is an offence under the **Corporations Act** for someone to ‘cause or threaten detriment’ to you if they believe or suspect that you have made or could make, a PID. There are various provisions in other PID legislation.<sup>24</sup>

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<sup>24</sup> **See NSW:** *Public Interest Disclosures Act 2022* (NSW) s 33, 35; *Independent Commission Against Corruption Act 1988* (NSW) s 79I, 79J; **Victoria:** *Public Interest Disclosures Act 2012* (Vic) S 43, 45, 46, 47; **Qld:** *Public Interest Disclosure Act 2010* (Qld) s40, 41, 42; **Tas:** *Public Interest Disclosures Act 2002* (Tas) s 19,20; **SA:** *Public Interest Disclosure Act 2018* (SA) s 11; **WA:** *Public Interest Disclosure Act (2003)* s 14, 15A, 15; **ACT:** *Public Interest Disclosure Act 2012* (ACT) s 39,40,41, 42; **NT:** *Independent Commissioner Against Corruption Act 2017* (NT) s 100, 101, 102, 103.

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