

Question on Notice
Public Interest Disclosure Act transitional provisions
Parliamentary Joint Committee on Corporations and Financial Services
Thursday 27 April 2017
Senator Xenophon, proof Hansard p51

Senator XENOPHON: More so than previous inspector-general responses. If there was a complaint about that operation now, even though it occurred before the introduction of the PID Act, is it something that the inspector-general could look at, or would you treat it as pre-dating the PID Act and therefore the PID Act would not apply? It might be a jurisdictional issue—

Mr Blight: I would have to look at the PID Act transitional provisions, but, again separating my answer from any particular alleged operation which may or may not have occurred, the inspector-general would take any allegation of alleged misconduct by an agency and consider it on its merits. If it did not fall within the PID Act jurisdiction, it could fall within the IGIS Act normal jurisdiction. So, if, hypothetically, an agency had acted in a way that was not lawful or proper in accordance with the Australian law that regulates the agency, that would be a matter that the inspector-general would have the power to investigate under her own legislation, even if it fell outside the PID Act.

Senator XENOPHON: If you could take that transitional issue on notice, that would be useful.

Please note that this response relates only to the operation of relevant *Public Interest Disclosure Act 2013* (PID Act) provisions and should not be read as implying that any particular operation occurred, or did not occur. Nor should this answer be read as implying that the Inspector-General will exercise her discretion in a certain way if a particular public interest disclosure is made to her.

A public interest disclosure can be made about disclosable conduct that occurred before the PID Act commenced. This is because:

- A current or former public official¹ can disclose information to the Inspector-General of Intelligence and Security that tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of ‘disclosable conduct’ (s26).
- The expression ‘disclosable conduct’² is defined in s29 of the PID Act and paragraph 29(3)(a) makes it clear that it is immaterial whether the conduct occurred before or after the commencement of that section.

¹ Public Official has the meaning given by Subdivision A of Division 3 of Part 4

² Note that s33 of the PID Act excludes conduct that an intelligence agency engages in in the proper performance of its functions from the definition of disclosable conduct.