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**From:** s22  
**Sent:** Tuesday, 29 March 2016 8:34 PM  
**To:** PID Review 2016  
**Cc:** s22  
**Subject:** Department of Defence submission - review of the PID Act 2013 [SEC=UNCLASSIFIED]  
**Attachments:** LETTER - 160316 - SEC - PID Act Review - UNCLAS.pdf

**UNCLASSIFIED**

Good evening,

Please find attached Defence's submission to the review of the PID Act 2013. Note, the first two summary pages of the submission are for public release. The more detailed submission is not for public release, which is identified in the header and footer in the attached.

Defence's point of contact is s22

I apologise for the delay.

Regards

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**Australian Government**  
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SEC/OUT/2016/75

2 / March 2016

Mr Philip Moss AM  
Independent Reviewer  
[PIDReview2016@pmc.gov.au](mailto:PIDReview2016@pmc.gov.au)

  
Dear Mr Moss

I refer to the public call for submissions in response to the effectiveness and operation of the *Public Interest Disclosure Act 2013*.

Defence fully supports, and is committed to, the objectives of the Act and ensuring that the integrity and accountability of the Commonwealth public sector is maintained and promoted by ensuring that serious allegations are properly investigated. Defence's track record in implementing the Act underlies this commitment.

In our experience, the intention of the Act to increase accountability within Government has resulted in decreased efficiency. To my mind, the broad scope of the Act and the lack of flexibility it provides have made it impractical and inefficient to implement. These issues are discussed further in the attached submission, which represents the views of Defence and the Defence Intelligence Agencies.

Yours sincerely

  
Dennis Richardson

**Attachment:**

1. Defence submission to the Independent Review of the *Public Interest Disclosure Act 2013*

**Summary of Defence Submission to the Independent Review of the  
*Public Interest Disclosure Act 2013***

1. Defence fully supports, and is committed to, upholding robust systems and processes which ensure the integrity and accountability of the Commonwealth public sector including the Australian Defence Force. Defence is also fully supportive of a scheme which compels agencies to respond to public interest disclosures and provides corresponding protections for individuals. However, in its current form the *Public Interest Disclosure Act 2013* (PID Act) has created a number of complexities that have adversely affected Defence's ability to manage incidents in a flexible and expeditious manner.
2. The meaning of 'disclosable conduct' is unnecessarily broad and captures disclosures that are minor in nature, including matters that would ordinarily be managed under the *Defence Force Discipline Act 1982*. Each disclosure triggers a mandatory series of onerous reporting obligations and decision making processes, regardless of the seriousness of the disclosure or the intention of the discloser. These requirements complicate the process and in some instances have been counter-productive in the management of otherwise simple matters.
3. Further, while the title of the legislation includes 'public interest', there is no requirement for a disclosure to concern or relate to a matter of public interest. This omission has resulted in some internal disclosers misusing the PID Act as a tool to stifle the efforts of commanders and managers. Some disclosers have even purported to use the scheme to intimidate staff in personnel management issues (particularly in Code of Conduct investigations and matters before the Fair Work Commission) in an attempt to prevent staff from dealing with the substantive issues. In this regard, the PID Act has been used as a mechanism to cripple the agency rather than a 'shield' to protect individuals.
4. As well as the broad definition of disclosable conduct, the inclusion of supervisors as people capable of receiving an internal disclosure has resulted in the unnecessary escalation of issues which would be better dealt with through normal management action. The desire of managers to 'do the right thing' and report potential disclosable conduct has prevented them from dealing with matters at the lowest practicable level. This can have adverse consequences for the individuals, the supervisors and Defence. These consequences include a hesitation on the part of some individuals to raise their concerns with their supervisors for fear that it will be escalated. This goes against the reporting culture that Defence has been working hard to achieve during the past decade.
5. The PID Act creates conflict with pre-existing legislated review processes and, in some cases, results in the duplication of effort to address matters that have already been considered through those non-PID processes. The PID process can therefore be used to extend or circumvent existing review processes, with little or no benefit to the discloser or Defence.
6. The offence provisions are ambiguous and lack certainty. This has adversely affected agencies' ability to take reasonable management action, satisfy other legislative obligations and resolve disputes without the individuals involved potentially committing an offence under the Act. This has also lead to uncertainty as to when the protections apply and the extent of those protections.
7. This submission includes the views of the Defence Intelligence Agencies: Australian Geospatial-Intelligence Organisation, the Defence Intelligence Organisation and the Australian Signals Directorate, which are prescribed authorities under the PID Act.

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**FOR PUBLIC RELEASE**

8. Defence has made several suggestions, many of these relating to the meaning of 'disclosable conduct' and the lack of flexibility of the PID Act.