



Public Interest Advocates (PIA)

Factsheet

2024

What is a PIA?

- Under the [Telecommunications \(Interception and Access\) Act 1979](#) (TIA Act), journalist information warrants (JIW) and the PIA function act as additional public interest safeguards.
- **The role of a PIA is to prepare a submission related to the issuing of a JIW, when a law enforcement agency or the Australian Security Intelligence Organisation (ASIO) wishes to access telecommunications data of a journalist (or their employer) in order to identify a journalist's source.**
- The Attorney-General or issuing authority is required to take PIA submissions into account when considering whether the public interest in issuing the warrant outweighs the public interest in protecting the confidentiality of a journalist's source.
- Although PIA submissions are not expressly required to address public interest factors, **they are required to consider issues relevant to the issuing of the warrant and any conditions that may be placed on it.**
- Additionally, the Attorney-General or issuing authority must consider relevant public interest factors when assessing a request for a JIW, regardless of whether a PIA has made submissions that specifically address public interest concerns.

What does the role involve?

- The PIA receives a copy of an agency's proposed warrant application in writing, and is required to produce written submissions within a 'reasonable period' of time (as determined by the PIA, subject to the considerations in subregulation 14(4), and within 7 days in any case). The PIA sends their submissions to the relevant person under subregulation 14(5). Submissions made after 7 days may still be considered by the issuing authority.
- Under subregulation 13(2), the TIA Act permits agencies to make oral applications in certain circumstances. It is expected that oral applications will be rare, as an issuing authority would only accept an oral application in urgent or exceptional circumstances. In the event that an agency did make an oral application, PIAs would be notified in advance, and permitted to attend the warrant hearing to make oral submissions.

Eligibility requirements

Recent amendments to the [Telecommunications \(Interception and Access\) Regulations 2017](#) (TIA Regulations) have expanded the eligibility criteria for appointment as a PIA.

Subregulation 18(1) of the TIA Regulations now prescribes the following qualifying criteria for appointment as a PIA:

- (a) the person is a **King's Counsel or Senior Counsel** who has been cleared for security purposes to a level that the Prime Minister considers appropriate; **or**
- (aa) the person is **practising as a barrister of a federal court or a Supreme Court of a State or Territory and:**
 - (i) for at least 10 years has engaged in practice as a barrister; and

- (ii) has experience in areas of law that the Prime Minister considers relevant; and
- (iii) has been cleared for security purposes to a level that the Prime Minister considers appropriate; **or**
- (b) the person has **served as a judge** of:
 - (i) the High Court; or
 - (ii) a court that is or was created by the Parliament under Chapter III of the Constitution; or
 - (iii) the Supreme Court of a State or Territory; or
 - (iv) an inferior court of a State or Territory;

but **no longer holds a commission as a judge of a court listed in this paragraph.**

For the purposes of subparagraph 18(1)(aa)(ii), **experience in relevant areas of law may include** practising experience in:

- alternative dispute resolution
- criminal law
- government
- inquests, inquiries, tribunals and commissions
- public administrative law, and/or
- technology and media law.

Security clearances

King's Counsel, Senior Counsel and those practising as a barrister of a federal court or a Supreme Court of a State or Territory must have, or be willing to, undergo a security clearance to the level of **Negative Vetting 1 or higher** as a condition of appointment as a PIA.

Remuneration

Remuneration will be provided for the time spent in performance of the role. A fixed rate is necessary to mitigate against any suggestion that an agency has paid, or could potentially pay, a higher fee to obtain a particular outcome. As per subregulation 20(2), remuneration is borne by the agency seeking the JIW.

For Senior Counsel

The rate is \$3,500.00 per day, or \$583.00 per hour, as set by Appendix D of the *Legal Service Directions 2017*.

For Junior Counsel

The rate is \$2,300.00 per day, or \$383.00 per hour, as set by Appendix D of the *Legal Service Directions 2017*.

Judicial pensions

Concern has been raised in the past about the impact on judicial pensions of serving as a PIA. In response to these concerns, the department sought advice from the Australian Government Solicitor. While payment of a pension to a former judge of State or Territory Court is a matter for the government of the relevant jurisdiction, the only jurisdiction where acting as a PIA would affect eligibility for, or payment of, judicial pension is Victoria. This is because the position of PIA is likely to be an 'office or place of profit under the Crown in right of the Commonwealth' for the purposes of the relevant Victorian legislation. We recommend that all applicants seek independent financial advice about their individual circumstances.

Legislative requirements of the role

For the full legislative requirements of the role, please see the [Telecommunications \(Interception and Access\) Act 1979](#) and the [Telecommunications \(Interception and Access\) Regulations 2017](#).

Relevant provisions within the TIA Act

Section 180H

- Prohibits enforcement agencies from authorising the disclosure of telecommunications data relating to a professional journalist, where a purpose of the proposed disclosure would be to identify a person known or reasonably believed to be a source, unless a JIW is in force.

Section 180Q

- Empowers enforcement agencies to apply to an issuing authority for a JIW.

Section 180R

- Empowers the issuing authority to require the enforcement agency to produce further information in connection with the application for a JIW.

Section 180T

- Sets out the test for the issuing of a JIW to enforcement agencies.

Section 180X

- Requires the Prime Minister to declare one or more persons as a Public Interest Advocate, and provides that PIAs may make submissions to the Attorney General, or the Issuing Authority, about matters relevant to a decision to issue or refuse to issue a warrant, or about the conditions or restrictions (if any) that are to be specified in such a warrant.

Relevant provisions within the TIA Regulations

Regulation 11–12

- Requires enforcement agencies and/or the Director-General of Security to give a copy of each proposed written application for a JIW to a PIA, or to notify a PIA of each proposed oral application.

Regulation 14

- Requires PIAs (subject to their agreement to prepare a submission in relation to a particular proposed written application) to endeavour to prepare a written submission within a reasonable period, but no later than 7 days after being given the proposed application.

Regulation 15

- Provides that a PIA may attend the hearing of an oral application for a JIW, and make oral submissions at that hearing.

Regulation 16

- Provides that if the issuing authority requires an agency to produce further information under s 180R/180K of the TIA Act, the issuing authority may also require the agency to provide that information to a PIA to enable him or her to produce a new or updated submission. Regulation 16 provides the issuing authority with a discretion, reflecting the fact that some requests for 'further information' will be for the mere purpose of clarifying a minor or technical detail of an application, or to confirm an assumption made in a PIA's previous submission.

Regulations 18–25

- Set out matters relating to the office of a PIA, including:
 - the term of appointment (up to 5 years' in duration, with the option for reappointment)
 - remuneration, and
 - conflicts of interest, termination and immunity from liability provisions.