



# **Public Interest Disclosure Act 2013**

**No. 133, 2013**

## **Compilation No. 16**

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## About this compilation

### **This compilation**

This is a compilation of the *Public Interest Disclosure Act 2013* that shows the text of the law as amended and in force on 12 August 2023 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### **Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

### **Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

### **Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# **An Act to facilitate disclosure and investigation of wrongdoing and maladministration in the Commonwealth public sector, and for other purposes**

## **Part 1—Introduction**

### **Division 1—Preliminary matters**

#### **1 Short title**

This Act may be cited as the *Public Interest Disclosure Act 2013*.

#### **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	15 July 2013
2. Sections 3 to 83	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	15 January 2014

**Part 1** Introduction

**Division 1** Preliminary matters

**Section 3**

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

**3 Crown to be bound**

- (1) This Act binds the Crown in each of its capacities.
- (2) However, this Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

**4 Extension to external Territories**

This Act extends to every external Territory.

**5 Extension to things outside Australia**

This Act extends to acts, omissions, matters and things outside Australia.

## **Division 2—Objects**

### **6 Objects**

The objects of this Act are:

- (a) to promote the integrity and accountability of the Commonwealth public sector; and
- (b) to encourage and facilitate the making of public interest disclosures by public officials and former public officials; and
- (c) to ensure that public officials, and former public officials, who make public interest disclosures are supported and are protected from adverse consequences relating to the disclosures; and
- (d) to ensure that disclosures by public officials, and former public officials, are properly investigated and dealt with.

## Division 3—Overview

### 7 Simplified outline of this Act

#### *General*

This Act provides a framework for current and former public officials to disclose allegations of misconduct (“disclosable conduct”) in the Commonwealth public sector.

Agencies are required to investigate disclosures of potential disclosable conduct.

Protection from reprisals is provided for current and former public officials making disclosures, and persons providing assistance in disclosure investigations and reviews.

#### *What is a public interest disclosure?*

A public interest disclosure is a disclosure of information relating to disclosable conduct alleged to have occurred within a Commonwealth agency (for relevant agencies, see sections 71 and 72).

There are 5 kinds of public interest disclosure (see section 26), which are as follows:

- (a) an internal disclosure (disclosed within an agency);
- (b) an external disclosure (disclosed outside Government);
- (c) an emergency disclosure;
- (d) a legal practitioner disclosure;
- (e) a NACC disclosure.

#### *What is disclosable conduct?*

Disclosable conduct, broadly speaking, includes conduct that:

- (a) is illegal or corrupt; or

- (b) results in a wastage of money or property; or
- (c) results in unreasonable danger or risk to health and safety; or
- (d) results in danger, or an increased risk of danger, to the environment.

See section 29 for more detail relating to disclosable conduct.

Personal work-related conduct (for example, bullying or harassment) is not generally disclosable conduct. However, personal work-related conduct may be treated as disclosable conduct in some circumstances. See subsection 29(2A) and section 29A for more detail relating to personal work-related conduct.

#### *Investigation of internal disclosures*

Generally, this Act provides for a disclosure of disclosable conduct to be first investigated internally, as an internal disclosure.

Internal disclosures may be made by public officials (and former public officials) to supervisors and authorised officers of Commonwealth agencies, including, in appropriate cases, an authorised officer of the Ombudsman and the IGIS.

Part 3 deals with the allocation of the handling of internal disclosures to appropriate agencies, and their investigation by the principal officers of those agencies. Investigative agencies may instead use their own investigative powers to investigate disclosures.

If an authorised officer or principal officer of an agency considers that the conduct disclosed would be more appropriately investigated under another law or power, the officer must take reasonable steps to refer the conduct, or to facilitate its referral, for investigation under the other law or power.

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Notice of decisions related to the allocation and investigation of disclosures must be given to the relevant discloser and:

- (a) the Ombudsman; or
- (b) the IGIS, for disclosures related to intelligence agencies, or ACIC or the Australian Federal Police in relation to that agency's intelligence functions.

The Ombudsman and the IGIS may also make recommendations to principal officers relating to the allocation and investigation of disclosures.

*Administrative support for the investigation and review of internal disclosures*

Part 4 provides for the following:

- (a) obligations of principal officers, authorised officers and supervisors of public officials to facilitate and support the making of internal disclosures;
- (b) functions of the Ombudsman and the IGIS to facilitate and support the operation of this Act;
- (c) the sharing of information between relevant agencies, the Ombudsman and the IGIS to facilitate the investigation and review of internal disclosures;
- (d) the public officials, agencies and principal officers covered by this Act;
- (e) how this Act deals with disclosures in relation to agencies that are affected by machinery of government changes.

*Protection of disclosers and witnesses*

The protection provisions in Division 1 of Part 2 relate to all forms of public interest disclosure (whether internal, external, emergency, legal practitioner or NACC disclosure). They deal with the protection of disclosers, and witnesses (that is, persons providing assistance in disclosure investigations and reviews), from reprisals by providing for the following:

- (a) immunity from liability that is related to disclosures and such assistance;
- (b) criminal offences for such reprisals, and for disclosing the identity of disclosers;
- (c) civil remedies for reprisals related to disclosures.

*Other matters*

Part 5 deals with additional matters related to the administration of this Act, including regular reports to Parliament by the Ombudsman.

### **7A Role of the Ombudsman under the *Ombudsman Act 1976***

- (1) A complaint may be made to the Ombudsman under the *Ombudsman Act 1976* about the handling by an agency of a disclosure under this Act, including complaints about the following matters:
  - (a) whether the disclosure has been handled reasonably;
  - (b) the allocation of the disclosure (including any delay or failure to allocate the disclosure);
  - (c) the investigation of the disclosure (including any delay or failure to investigate the disclosure);
  - (d) compliance with this Act by the agency or any of its officers, including its principal officer (including any failure to comply with this Act);
  - (e) any other matter relating to the handling of the disclosure.
- (2) Subsection (1) does not apply in relation to:
  - (a) the IGIS; or
  - (b) an intelligence agency; or
  - (c) ACIC or the Australian Federal Police if the disclosure relates to the intelligence functions of that agency.
- (3) This section does not limit section 5 or 5A of the *Ombudsman Act 1976*.

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Note: Section 5 of the *Ombudsman Act 1976* sets out the functions of the Ombudsman under that Act. Section 5A of that Act has the effect of providing that those functions extend to investigating complaints relating to the handling of disclosures under this Act.

### **7B Role of the IGIS under the *Inspector-General of Intelligence and Security Act 1986***

- (1) A complaint may be made to the IGIS under the *Inspector-General of Intelligence and Security Act 1986* about the handling of a disclosure under this Act by:
  - (a) an intelligence agency; or
  - (b) ACIC or the Australian Federal Police if the disclosure relates to the intelligence functions of that agency.
- (2) Without limitation, the complaint may relate to any of the following matters:
  - (a) whether the disclosure has been handled reasonably;
  - (b) the allocation of the disclosure (including any delay or failure to allocate the disclosure);
  - (c) the investigation of the disclosure (including any delay or failure to investigate the disclosure);
  - (d) compliance with this Act by the agency or any of its officers, including its principal officer (including any failure to comply with this Act);
  - (e) any other matter relating to the handling of the disclosure.
- (3) This section does not limit section 8 or 8A of the *Inspector-General of Intelligence and Security Act 1986*.

Note: Section 8 of the *Inspector-General of Intelligence and Security Act 1986* sets out the functions of the Inspector-General of Intelligence and Security under that Act. Section 8A of that Act has the effect of providing that those functions extend to investigating complaints relating to the handling of disclosures under this Act.

## Division 4—Definitions

### 8 Definitions

In this Act:

**ACIC** means the agency known as the Australian Criminal Intelligence Commission established by the *Australian Crime Commission Act 2002*.

**affected agency**, in relation to a machinery of government change: see section 73A.

**agency** has the meaning given by section 71.

**allocation**, in relation to a disclosure:

- (a) means the allocation of the handling of the disclosure under section 43; and
- (b) includes the reallocation of the handling of the disclosure as decided under section 45.

Example: One situation in which a disclosure may be reallocated under section 45 is in response to a recommendation by the Ombudsman or the IGIS under section 55.

**another law or power** means:

- (a) a law of the Commonwealth (including procedures under such a law), other than this Act; or
- (b) the executive power of the Commonwealth.

**Australia**, when used in a geographical sense, includes the external Territories.

**Australian legal practitioner** has the same meaning as in the *Evidence Act 1995*.

**Australian police force** means the Australian Federal Police or the police force of a State or Territory.

**authorised internal recipient** has the meaning given by section 34.

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**authorised officer** has the meaning given by section 36.

**belongs**: section 69 sets out when a public official **belongs** to an agency.

**Cabinet information** means:

- (a) information contained in a document that is an exempt document under section 34 of the *Freedom of Information Act 1982*; or
- (b) information the disclosure of which would involve the disclosure of any deliberation, or decision, of the Cabinet or a committee of the Cabinet.

**change time**, in relation to a machinery of government change: see section 73A.

**chief executive officer** has the meaning given by subsection 73(2).

**Commonwealth company** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

**Commonwealth contract** has the meaning given by subsections 30(3) and (4).

**Commonwealth entity** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

**Commonwealth tribunal** means:

- (a) a body established as a tribunal by or under a law of the Commonwealth; or
- (b) a statutory officeholder prescribed by the PID rules for the purposes of this paragraph.

**completed**, in relation to an investigation under Division 2 of Part 3, has the meaning given by subsection 52(2).

**contracted service provider** has the meaning given by subsection 30(2).

**corruption issue** has the same meaning as in the *National Anti-Corruption Commission Act 2022*.

**Defence Department** means the Department administered by the Minister administering Part III of the *Defence Act 1903*, and includes:

- (a) the Defence Force; and
- (b) the Australian Defence Force Cadets.

**Department** means:

- (a) a Department of State (including the Defence Department), excluding any part that is itself a Commonwealth entity; or
- (b) a Department of the Parliament that is established under the *Parliamentary Service Act 1999*.

**designated publication restriction** means any of the following:

- (a) section 121 of the *Family Law Act 1975*;
- (b) section 91X of the *Migration Act 1958*;
- (c) section 110X of the *Child Support (Registration and Collection) Act 1988*;
- (d) a non-publication order (within the meaning of Part XAA of the *Judiciary Act 1903*) of any court;
- (e) a suppression order (within the meaning of Part XAA of the *Judiciary Act 1903*) of any court;
- (f) an order under section 31, 38J or 38L of the *National Security Information (Criminal and Civil Proceedings) Act 2004*;
- (g) an order under section 28 of the *Witness Protection Act 1994*;
- (h) an order under subsection 35(3), 35(4) or 35AA(2) of the *Administrative Appeals Tribunal Act 1975*;
- (ia) section 21C of the *Australian Crime Commission Act 2002*;
- (j) a direction under subsection 25A(9) of the *Australian Crime Commission Act 2002*;
- (k) section 29B of the *Australian Crime Commission Act 2002*;
- (l) section 98 or 101, or subsection 233(3), of the *National Anti-Corruption Commission Act 2022*.

**detriment** has a meaning affected by section 13.

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***disclosable conduct*** has the meaning given by Subdivision B of Division 2 of Part 2.

***disclose*** includes re-disclose.

***disclosure investigation*** means:

- (a) an investigation under Division 2 of Part 3; or
- (b) an investigation, in relation to a disclosure that is allocated under Division 1 of Part 3, by an investigative agency under a separate investigative power.

***emergency disclosure*** means a public interest disclosure covered by item 3 of the table in subsection 26(1).

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to do an act.

***examiner*** of ACIC has the meaning given by the *Australian Crime Commission Act 2002*.

***external disclosure*** means a public interest disclosure covered by item 2 of the table in subsection 26(1).

***Federal Court*** means the Federal Court of Australia.

***foreign country*** includes:

- (a) a colony or overseas territory; and
- (b) a territory outside Australia, where a foreign country is to any extent responsible for the international relations of the territory; and
- (c) a territory outside Australia that is to some extent self-governing, but that is not recognised as an independent sovereign state by Australia.

***foreign government*** means the government of a foreign country.

***foreign public official*** has the same meaning as in Division 70 of the *Criminal Code*.

**identifying information** has the meaning given by paragraph 20(1)(b).

**IGIS** means the Inspector-General of Intelligence and Security.

**information**, in relation to a disclosure, includes an allegation made in conjunction with another disclosure of information.

**intelligence agency** means:

- (a) the Australian Secret Intelligence Service; or
- (b) the Australian Security Intelligence Organisation; or
- (c) the Australian Geospatial-Intelligence Organisation; or
- (d) the Defence Intelligence Organisation; or
- (e) the Australian Signals Directorate; or
- (f) the Office of National Intelligence.

**intelligence function**, in relation to ACIC or the Australian Federal Police, has the meaning given by the *Inspector-General of Intelligence and Security Act 1986*.

**intelligence information** has the meaning given by section 41.

**internal disclosure** means a public interest disclosure that:

- (a) is covered by item 1 of the table in subsection 26(1); or
- (b) is an allegation made in conjunction with such a disclosure.

**international organisation** means an organisation:

- (a) of which Australia and one or more foreign countries are members; or
- (b) that is constituted by a person or persons representing Australia and a person or persons representing one or more foreign countries.

**investigate**, in relation to a disclosure, has the meaning given by subsections 47(2) and (3).

**investigative agency** means:

- (a) the Ombudsman; or
- (b) the IGIS; or

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(c) an agency that is prescribed by the PID rules to be an investigative agency for the purposes of this Act.

**judicial officer** has the meaning given by subsection 32(2).

**legal practitioner disclosure** means a public interest disclosure covered by item 4 of the table in subsection 26(1).

**legal professional privilege** includes privilege under Division 1 of Part 3.10 of the *Evidence Act 1995* or under a corresponding law of a State or Territory.

**machinery of government change**: see section 73A.

**member of the staff** of the chief executive officer of a court or Commonwealth tribunal has the meaning given by subsection 32(3).

**NACC disclosure** has the same meaning as in the *National Anti-Corruption Commission Act 2022*.

**new agency**, in relation to a machinery of government change: see section 73A.

**official of a registered industrial organisation** means a person who holds an office (within the meaning of the *Fair Work Act 2009*) in an organisation registered, or an association recognised, under the *Fair Work (Registered Organisations) Act 2009*.

**Ombudsman** means the Commonwealth Ombudsman.

**personal work-related conduct**: see section 29A.

**PID rules** (short for Public Interest Disclosure Rules) means the rules made by the Minister under section 83.

**position**, in relation to a public official, includes office or situation.

**prescribed authority** has the meaning given by section 72.

**principal officer**, in relation to an agency, has the meaning given by section 73.

***provides assistance***: for when a person ***provides assistance*** in relation to a disclosure, see section 12A (Witnesses—immunity from liability etc.).

***public interest disclosure*** has the meaning given by Subdivision A of Division 2 of Part 2.

***public official*** has the meaning given by Subdivision A of Division 3 of Part 4.

***recipient***, in relation to a disclosure of information, means the person to whom the information is disclosed.

***relates***: section 35 sets out when conduct ***relates*** to an agency.

***reprisal***: see the definition of ***takes a reprisal*** in section 13.

***Royal Commission*** has the meaning given by the *Royal Commissions Act 1902*.

***sensitive law enforcement information*** has the meaning given by subsection 41(2).

***separate investigative power*** has the meaning given by subsection 49(2).

***statutory officeholder*** has the meaning given by subsection 69(2).

***stop action direction under the NACC Act*** means a direction under subsection 43(1) of the *National Anti-Corruption Commission Act 2022* (including as applied by section 211 of that Act) to stop taking action in relation to a corruption issue or a NACC corruption issue.

***supervisor***, in relation to a person who makes a disclosure, is a public official who supervises or manages the person making the disclosure.

***takes a reprisal*** has the meaning given by section 13.

***transferred function***, in relation to a machinery of government change: see section 73A.

## Part 2—Protection of disclosers and witnesses

### Division 1—Protections

#### 9 Simplified outline

The following is a simplified outline of this Division:

An individual is not subject to any civil, criminal or administrative liability for making a public interest disclosure or providing assistance in relation to a public interest disclosure.

It is an offence to take a reprisal against a person because of a public interest disclosure (including a proposed or a suspected public interest disclosure).

The Federal Court or Federal Circuit and Family Court of Australia (Division 2) may make orders for civil remedies (including compensation, injunctions and reinstatement of employment) if a reprisal is taken against a person because of a public interest disclosure (including a proposed or a suspected public interest disclosure).

It is an offence to disclose the identity of an individual who makes a public interest disclosure.

Note 1: Division 2 sets out the kinds of public interest disclosures.

Note 2: The principal officer and the authorised officers of an agency have a duty to protect a person who is, or has been, a public official belonging to the agency from reprisals relating to a public interest disclosure (see subsections 59(9) and 60(2)).

## **Subdivision A—Immunity from liability**

### **10 Protection of disclosers**

- (1) If an individual makes a public interest disclosure:
  - (a) the individual is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the public interest disclosure; and
  - (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the individual on the basis of the public interest disclosure.
- (2) Without limiting subsection (1):
  - (a) the individual has absolute privilege in proceedings for defamation in respect of the public interest disclosure; and
  - (b) a contract to which the individual is a party must not be terminated on the basis that the public interest disclosure constitutes a breach of the contract.

### **11 Liability for false or misleading statements etc. unaffected**

- (1) Section 10 does not apply to civil, criminal or administrative liability (including disciplinary action) for knowingly making a statement that is false or misleading.
- (2) Without limiting subsection (1) of this section, section 10 does not apply to liability for an offence against section 137.1, 137.2, 144.1 or 145.1 of the *Criminal Code*.

### **11A Designated publication restrictions**

Section 10 does not apply to civil, criminal or administrative liability (including disciplinary action) for making a disclosure that contravenes a designated publication restriction if the person making the disclosure:

- (a) knows that the disclosure contravenes the designated publication restriction; and
- (b) does not have a reasonable excuse for that contravention.

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## 12 Discloser's liability for own conduct not affected

To avoid doubt, whether the individual's disclosure of his or her own conduct is a public interest disclosure does not affect his or her liability for the conduct.

### 12A Witnesses—immunity from liability etc.

#### *Scope*

- (1) This section applies to an individual (the *witness*) who provides assistance in relation to a public interest disclosure (other than the individual who makes the disclosure), subject to section 12B.

#### *Meaning of provides assistance*

- (2) A person *provides assistance* in relation to a public interest disclosure if the person gives information or produces a document or other thing, or answers a question, that the person considers on reasonable grounds to be relevant to:
  - (a) the making of a decision in relation to the allocation of a disclosure under section 43; or
  - (b) a disclosure investigation or a proposed disclosure investigation; or
  - (c) a review or proposed review by the Ombudsman or the IGIS, under subsection 55(3), about the handling of a disclosure.

#### *Immunity from civil, criminal or administrative action*

- (3) The witness is not subject to any civil, criminal or administrative liability (including disciplinary action) because of the assistance provided.

#### *Immunity from enforcement of remedies or rights*

- (4) No contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the witness on the basis of the assistance provided.

*Absolute privilege*

- (5) Without limiting subsections (3) and (4):
- (a) the witness has absolute privilege in proceedings for defamation in respect of the assistance provided; and
  - (b) a contract to which the witness is a party must not be terminated on the basis that the assistance provided constitutes a breach of the contract.

**12B Witnesses—exceptions to immunities**

*Scope*

- (1) This section applies to an individual (the *witness*) who provides assistance in relation to a public interest disclosure (other than the individual who makes the disclosure).

*False or misleading statements etc.*

- (2) Section 12A does not apply to the civil, criminal or administrative liability (including any disciplinary action) of the witness for knowingly making a statement that is false or misleading.
- (3) Without limiting subsection (2) of this section, section 12A does not apply to the liability of the witness for an offence against section 137.1, 137.2, 144.1 or 145.1 of the *Criminal Code*.

*Designated publication restrictions*

- (4) Section 12A does not apply to proceedings against the witness for contravening a designated publication restriction.

Note: For *designated publication restriction*, see section 8.

*Assistance related to witness' conduct*

- (5) To avoid doubt, if the assistance provided relates to the witness' own conduct, section 12A does not affect the witness' liability for the conduct.

## Subdivision B—Protection from reprisals

### 13 What constitutes taking a reprisal

- (1) A person (the *first person*) *takes a reprisal* against another person (the *second person*) if:
- (a) the first person engages in conduct that:
    - (i) results in detriment to the second person; or
    - (ii) consists of, or results in, a threat to cause detriment to the second person; and
  - (b) when the conduct is engaged in, the first person believes or suspects that the second person, or any other person:
    - (i) has made a public interest disclosure; or
    - (ii) may have made a public interest disclosure; or
    - (iii) proposes to make a public interest disclosure; or
    - (iv) could make a public interest disclosure; and
  - (c) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.

Examples: Persons against whom a reprisal may be taken within the meaning of this section in relation to the making of a public interest disclosure by any person include the following:

- (a) the person who made the disclosure;
- (b) a witness in relation to the disclosure, within the meaning of section 12A.

- (2) *Detriment* includes (without limitation) any of the following:
- (a) dismissal of an employee;
  - (b) injury of an employee in his or her employment;
  - (c) alteration of an employee's position to his or her disadvantage;
  - (d) discrimination between an employee and other employees of the same employer;
  - (e) harassment or intimidation of a person;
  - (f) harm or injury to a person, including psychological harm;
  - (g) damage to a person's property;
  - (h) damage to a person's reputation;

- (i) damage to a person's business or financial position;
  - (j) any other damage to a person.
- (3) Despite subsection (1), a person does not take a reprisal against another person to the extent that the person takes administrative action that is reasonable to protect the other person from detriment.

Note 1: A person may be liable in a civil action under section 14, 15 or 16 for taking a reprisal against another person.

Note 2: If a person engages in conduct that, in substance, constitutes taking a reprisal against another person, the person may be guilty of an offence against section 19.

## 14 Compensation

- (1) If the Federal Court or Federal Circuit and Family Court of Australia (Division 2) is satisfied, on the application of a person (the *applicant*), that another person (the *respondent*) took or is taking a reprisal against the applicant, the Court may:
- (a) in any case—make an order requiring the respondent to compensate the applicant for loss, damage or injury as a result of the reprisal; or
  - (b) if the Court is satisfied that the respondent took or is taking the reprisal in connection with the respondent's position as an employee:
    - (i) make an order requiring the respondent to compensate the applicant for a part of loss, damage or injury as a result of the reprisal, and make another order requiring the respondent's employer to compensate the applicant for a part of loss, damage or injury as a result of the reprisal; or
    - (ii) make an order requiring the respondent and the respondent's employer jointly to compensate the applicant for loss, damage or injury as a result of the reprisal; or
    - (iii) make an order requiring the respondent's employer to compensate the applicant for loss, damage or injury as a result of the reprisal.

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- (2) The Federal Court or Federal Circuit and Family Court of Australia (Division 2) must not make an order under paragraph (1)(b) if the respondent's employer establishes that it took reasonable precautions, and exercised due diligence, to avoid the reprisal.
- (3) If the Federal Court or Federal Circuit and Family Court of Australia (Division 2) makes an order under subparagraph (1)(b)(ii), the respondent and the respondent's employer are jointly and severally liable to pay the compensation concerned.

### 15 Injunctions, apologies and other orders

- (1) If the Federal Court or Federal Circuit and Family Court of Australia (Division 2) is satisfied, on the application of a person (the *applicant*), that another person (the *respondent*) took or is taking a reprisal against the applicant, the Court may make any or all of the following orders:
  - (a) an order granting an injunction, on such terms as the Court thinks appropriate:
    - (i) restraining the respondent from taking the reprisal; or
    - (ii) if the reprisal involves refusing or failing to do something—requiring the respondent to do that thing;
  - (b) an order requiring the respondent to apologise to the applicant for taking the reprisal;
  - (c) any other order the Court thinks appropriate.
- (2) If the Federal Court or Federal Circuit and Family Court of Australia (Division 2) has power under subsection (1) to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the Court may make any other orders (including granting an injunction) that it thinks appropriate against any other person who has:
  - (a) aided, abetted, counselled or procured the conduct against the applicant; or
  - (b) induced the conduct against the applicant, whether through threats or promises or otherwise; or

- (c) been in any way (directly or indirectly) knowingly concerned in or a party to the conduct against the applicant; or
- (d) conspired with others to effect the conduct against the applicant.

## **16 Reinstatement**

If the Federal Court or Federal Circuit and Family Court of Australia (Division 2) is satisfied, on the application of a person (the *applicant*), that:

- (a) another person (the *respondent*) has taken, or is taking, a reprisal against the applicant; and
- (b) the applicant is or was employed in a particular position with the respondent; and
- (c) the reprisal wholly or partly consists, or consisted, of the respondent terminating, or purporting to terminate, the applicant's employment;

the Court may order that the applicant be reinstated in that position or a position at a comparable level.

## **17 Multiple orders**

The Federal Court or Federal Circuit and Family Court of Australia (Division 2) may make orders under sections 14, 15 and 16 in respect of the same conduct.

## **18 Costs only if proceedings instituted vexatiously etc.**

- (1) In proceedings (including an appeal) in a court in relation to a matter arising under section 14, 15 or 16, the applicant for an order under that section must not be ordered by the court to pay costs incurred by another party to the proceedings, except in accordance with subsection (2).
- (2) The applicant may be ordered to pay the costs only if:
  - (a) the court is satisfied that the applicant instituted the proceedings vexatiously or without reasonable cause; or

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- (b) the court is satisfied that the applicant's unreasonable act or omission caused the other party to incur the costs.

### 19 Reprisals in relation to disclosures—offences

*Taking a reprisal—by causing detriment*

- (1) A person (the **first person**) commits an offence in relation to another person (the **second person**) if:
  - (a) the first person engages in conduct; and
  - (b) engaging in the conduct results in detriment to the second person; and
  - (c) when the conduct is engaged in, the first person believes or suspects that the second person, or any other person:
    - (i) has made a public interest disclosure; or
    - (ii) may have made a public interest disclosure; or
    - (iii) proposes to make a public interest disclosure; or
    - (iv) could make a public interest disclosure; and
  - (d) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Taking a reprisal—by a threat to cause detriment*

- (2) A person (the **first person**) commits an offence in relation to another person (the **second person**) if:
  - (a) the first person engages in conduct; and
  - (b) engaging in the conduct consists of, or results in, a threat to cause detriment to the second person; and
  - (c) the first person is reckless as to whether the second person fears that the threat would be carried out; and
  - (d) when the conduct is engaged in, the first person believes or suspects that the second person, or any other person:
    - (i) has made a public interest disclosure; or
    - (ii) may have made a public interest disclosure; or

- (iii) proposes to make a public interest disclosure; or
- (iv) could make a public interest disclosure; and
- (e) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (3) Subsection (2) applies whether or not the threat mentioned in paragraph (2)(b) is:
- (a) express or implied; or
  - (b) conditional or unconditional.

*Exception—reasonable administrative action*

- (4) Subsections (1) and (2) do not apply if the conduct engaged in by the first person is administrative action that is reasonable to protect the second person from detriment.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

*No requirement to prove matters related to a public interest disclosure*

- (5) In a prosecution for an offence against this section, it is not necessary to prove that any person:
- (a) has made a public interest disclosure; or
  - (b) may have made a public interest disclosure; or
  - (c) proposes to make a public interest disclosure; or
  - (d) could make a public interest disclosure.

Note 1: The offences against subsections (1) and (2) relate to whether the first person has taken a reprisal (within the meaning of section 13) against the second person.

Note 2: The offence against subsection (1) relates to a reprisal that consists of causing detriment to another person. The offence against subsection (2) relates to a reprisal that involves a threat to cause detriment to another person.

Note 3: For actions that constitute a *detriment*, see subsection 13(2).

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Note 4: Proof of intention, knowledge or recklessness will satisfy a fault element of recklessness (see subsection 5.4(4) of the *Criminal Code*).

**19A Interaction between civil remedies and offences**

To avoid doubt, a person may bring proceedings under section 14, 15 or 16 in relation to the taking of a reprisal even if a prosecution for an offence against section 19 in relation to the reprisal has not been brought, or cannot be brought.

**Subdivision C—Protecting the identity of disclosers**

**20 Disclosure or use of identifying information**

*Disclosure of identifying information*

- (1) A person (the **first person**) commits an offence if:
- (a) another person (the **second person**) has made a public interest disclosure; and
  - (b) the first person discloses information (**identifying information**) that:
    - (i) was obtained by any person in that person's capacity as a public official; and
    - (ii) is likely to enable the identification of the second person as a person who has made a public interest disclosure; and
  - (c) the disclosure is to a person other than the second person.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

*Use of identifying information*

- (2) A person commits an offence if the person uses identifying information.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

*Exceptions*

- (3) Subsections (1) and (2) do not apply if one or more of the following applies:
- (a) the disclosure or use of the identifying information is for the purposes of this Act;
  - (b) the disclosure or use of the identifying information is in connection with the performance of a function conferred on the Ombudsman by section 5A of the *Ombudsman Act 1976*;
  - (c) the disclosure or use of the identifying information is in connection with the performance of a function conferred on the IGIS by section 8A of the *Inspector-General of Intelligence and Security Act 1986*;
  - (d) the disclosure or use of the identifying information is for the purposes of:
    - (i) a law of the Commonwealth; or
    - (ii) a prescribed law of a State or a Territory;
  - (e) the person likely to be identified by the identifying information has consented to the disclosure or use of the identifying information, or acted in a way that is inconsistent with keeping that person's identity confidential;
  - (f) the identifying information has previously been lawfully published.
- Note: A defendant bears an evidential burden in relation to a matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).
- (4) For the purposes of paragraph (3)(a), and without limitation, a person discloses or uses identifying information for the purposes of this Act if the person does so:
- (a) for the purpose of providing assistance in relation to a public interest disclosure; or
  - (b) for the purpose of providing legal advice, or other professional assistance, relating to a public interest disclosure, in the circumstances mentioned in paragraph 67(2)(a); or

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- (c) in the performance or exercise (or purported performance or exercise) of a function or power conferred by this Act, in the circumstances mentioned in subsection 78(1).

**21 Identifying information not to be disclosed etc. to courts or tribunals**

A person who is, or has been, a public official is not to be required:

- (a) to disclose to a court or tribunal identifying information that the person has obtained; or
  - (b) to produce to a court or tribunal a document containing identifying information that the person has obtained;
- except where it is necessary to do so for the purposes of giving effect to this Act.

**Subdivision D—Interaction with the Fair Work Act 2009**

**22 Interaction with protections under Part 3-1 of the *Fair Work Act 2009***

Without limiting the operation of the *Fair Work Act 2009*, Part 3-1 of that Act applies in relation to the making of a public interest disclosure by a public official who is, or has been, an employee (within the meaning of that Part) as if, for the purposes of that Act:

- (a) this Act were a workplace law; and
- (b) making that disclosure were a process or proceeding under a workplace law.

**22A Interaction with remedies under the *Fair Work Act 2009***

- (1) A person is not entitled to make an application to the Federal Court or Federal Circuit and Family Court of Australia (Division 2) for an order under section 14, 15 or 16 of this Act in relation to particular conduct if another application has been made:
  - (a) under section 539 of the *Fair Work Act 2009* in relation to a contravention of section 340 or 772 of that Act constituted by the same conduct; or

- (b) under section 394 of the *Fair Work Act 2009* in relation to the same conduct.
- (2) A person is not entitled to apply under:
  - (a) section 539 of the *Fair Work Act 2009* for an order in relation to a contravention of section 340 or 772 of that Act constituted by particular conduct; or
  - (b) section 394 of the *Fair Work Act 2009* for an order in relation to particular conduct;if another application has been made for an order under section 14, 15 or 16 of this Act in relation to the same conduct.
- (3) This section does not apply if the other application mentioned in subsection (1) or (2) has been discontinued or has failed for want of jurisdiction.

## **Subdivision E—Miscellaneous**

### **23 Claims for protection**

- (1) If, in civil or criminal proceedings (the *primary proceedings*) instituted against an individual in a court, the individual makes a claim (relevant to the proceedings) that, because of section 10, the individual is not subject to any civil, criminal or administrative liability for making a particular public interest disclosure:
  - (a) the individual bears the onus of adducing or pointing to evidence that suggests a reasonable possibility that the claim is made out; and
  - (b) if the individual discharges that onus—the party instituting the primary proceedings against the individual bears the onus of proving that the claim is not made out; and
  - (c) the court must deal with the claim in separate proceedings; and
  - (d) the court must adjourn the primary proceedings until the claim has been dealt with; and

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- (e) none of the following:
  - (i) any admission made by the individual in the separate proceedings;
  - (ii) any information given by the individual in the separate proceedings;
  - (iii) any other evidence adduced by the individual in the separate proceedings;is admissible in evidence against the individual except in proceedings in respect of the falsity of the admission, information or evidence; and
- (f) if the individual or another person gives evidence in the separate proceedings in support of the claim—giving that evidence does not amount to a waiver of privilege for the purposes of the primary proceedings or any other proceedings.

- (2) To avoid doubt, a right under section 126K of the *Evidence Act 1995* not to be compelled to give evidence is a privilege for the purposes of paragraph (1)(f) of this section.

**24 Protections have effect despite other Commonwealth laws**

Section 10, 14, 15 or 16 has effect despite any other provision of a law of the Commonwealth, unless:

- (a) the provision is enacted after the commencement of this section; and
- (b) the provision is expressed to have effect despite this Part or that section.

## Division 2—Public interest disclosures

### 25 Simplified outline

The following is a simplified outline of this Division:

The protections in Division 1 apply to public interest disclosures.

Broadly speaking, a public interest disclosure is a disclosure of information, by a public official, or a former public official, that is:

- a disclosure within the government, to an authorised internal recipient or a supervisor, concerning suspected or probable illegal conduct or other wrongdoing (referred to as “disclosable conduct”); or
- a disclosure to anybody, if an internal disclosure of the information has not been adequately dealt with, and if wider disclosure satisfies public interest requirements; or
- a disclosure to anybody if there is substantial and imminent danger to health or safety; or
- a disclosure to an Australian legal practitioner for purposes connected with the above matters; or
- a NACC disclosure concerning disclosable conduct.

However, there are limitations to take into account the need to protect intelligence information.

Note 1: ***Disclosable conduct, authorised internal recipient and intelligence information*** are defined in Subdivisions B, C and D.

Note 2: ***Public official*** is defined in Subdivision A of Division 3 of Part 4.

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**Subdivision A—Public interest disclosures**

**26 Meaning of *public interest disclosure***

- (1) A disclosure of information is a ***public interest disclosure*** if:
- (a) the disclosure is made by a person (the ***discloser***) who is, or has been, a public official; and
  - (b) the recipient of the information is a person of the kind referred to in column 2 of an item of the following table; and
  - (c) all the further requirements set out in column 3 of that item are met.

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<b>Public interest disclosures</b>			
<b>Item</b>	<b>Column 1 Type of disclosure</b>	<b>Column 2 Recipient</b>	<b>Column 3 Further requirements</b>
1	Internal disclosure	An authorised internal recipient, or a supervisor of the discloser	(a) The information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct.  (b) The disclosure is not made in the course of performing the discloser's ordinary functions as a public official.
2	External disclosure	Any person other than a foreign public official	(a) The information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct.  (b) On a previous occasion, the discloser made an internal disclosure of information that consisted of, or included, the information now disclosed.

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<b>Public interest disclosures</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Type of disclosure</b>	<b>Recipient</b>	<b>Further requirements</b>
			(c) Any of the following apply: <ul style="list-style-type: none"><li>(i) a disclosure investigation relating to the internal disclosure was conducted under Division 2 of Part 3, and the discloser believes on reasonable grounds that the investigation was inadequate;</li><li>(ii) a disclosure investigation relating to the internal disclosure was conducted (whether or not under Division 2 of Part 3), and the discloser believes on reasonable grounds that the response to the investigation was inadequate;</li><li>(iii) this Act requires an investigation relating to the internal disclosure to be conducted under Division 2 of Part 3, and that investigation has not been completed within the time limit under section 52.</li></ul>
			(e) The disclosure is not, on balance, contrary to the public interest.
			(f) No more information is publicly disclosed than is reasonably necessary to identify one or more instances of disclosable conduct.
			(h) The information does not consist of, or include, intelligence information.
			(i) None of the conduct with which the disclosure is concerned relates to an intelligence agency.

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**Part 2** Protection of disclosers and witnesses

**Division 2** Public interest disclosures

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<b>Public interest disclosures</b>			
<b>Item</b>	<b>Column 1 Type of disclosure</b>	<b>Column 2 Recipient</b>	<b>Column 3 Further requirements</b>
3	Emergency disclosure	Any person other than a foreign public official	<p>(a) The discloser believes on reasonable grounds that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the environment.</p> <p>(b) The extent of the information disclosed is no greater than is necessary to alert the recipient to the substantial and imminent danger.</p> <p>(c) If the discloser has not previously made an internal disclosure of the same information, there are exceptional circumstances justifying the discloser's failure to make such an internal disclosure.</p> <p>(d) If the discloser has previously made an internal disclosure of the same information, there are exceptional circumstances justifying this disclosure being made before a disclosure investigation of the internal disclosure is completed.</p> <p>(f) The information does not consist of, or include, intelligence information.</p>
4	Legal practitioner disclosure	An Australian legal practitioner	<p>(a) The disclosure is made for the purpose of obtaining legal advice, or professional assistance, from the recipient in relation to the discloser having made, or proposing to make, a public interest disclosure.</p> <p>(b) If the discloser knew, or ought reasonably to have known, that any of the information has a national security or other protective security classification, the recipient holds the</p>

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<b>Public interest disclosures</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Type of disclosure</b>	<b>Recipient</b>	<b>Further requirements</b>
			appropriate level of security clearance. (c) The information does not consist of, or include, intelligence information.

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- (1A) A disclosure of information is also a **public interest disclosure** if:
- (a) the disclosure is made by a person who is, or has been, a public official; and
  - (b) the information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct; and
  - (c) the disclosure is a NACC disclosure.
- (2) However, a disclosure made before the commencement of this section is not a **public interest disclosure**.
- (2A) A response to a disclosure investigation is taken, for the purposes of item 2 of the table in subsection (1), not to be inadequate to the extent that the response involves action that has been, is being, or is to be taken by:
- (a) a Minister; or
  - (b) the Speaker of the House of Representatives; or
  - (c) the President of the Senate.
- (3) In determining, for the purposes of item 2 of the table in subsection (1), whether a disclosure is not, on balance, contrary to the public interest, regard must be had to the following:
- (aa) whether the disclosure would promote the integrity and accountability of the Commonwealth public sector;
  - (ab) the extent to which the disclosure would expose a failure to address serious wrongdoing in the Commonwealth public sector;

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- (ac) the extent to which it would assist in protecting the discloser from adverse consequences relating to the disclosure if the disclosure were a public interest disclosure;
- (ad) the principle that disclosures by public officials should be properly investigated and dealt with;
- (ae) the nature and seriousness of the disclosable conduct;
  - (a) any risk that the disclosure could cause damage to any of the following:
    - (i) the security of the Commonwealth;
    - (ii) the defence of the Commonwealth;
    - (iii) the international relations of the Commonwealth;
    - (iv) the relations between the Commonwealth and a State;
    - (v) the relations between the Commonwealth and the Australian Capital Territory;
    - (vi) the relations between the Commonwealth and the Northern Territory;
    - (vii) the relations between the Commonwealth and Norfolk Island;
  - (b) if any of the information disclosed in the disclosure is Cabinet information—the principle that Cabinet information should remain confidential unless it is already lawfully publicly available;
  - (c) if any of the information disclosed in the disclosure was communicated in confidence by or on behalf of:
    - (i) a foreign government; or
    - (ii) an authority of a foreign government; or
    - (iii) an international organisation;the principle that such information should remain confidential unless that government, authority or organisation, as the case may be, consents to the disclosure of the information;
  - (d) any risk that the disclosure could prejudice the proper administration of justice;
  - (e) the principle that legal professional privilege should be maintained;

- (f) any other relevant matters.

## 27 Associated allegations

An allegation is a **public interest disclosure** if:

- (a) it is made by a person who makes a disclosure of information that is a public interest disclosure under section 26; and
- (b) it is made to the recipient of that disclosure in conjunction with that disclosure; and
- (c) it is an allegation to the effect that the information disclosed concerns one or more instances of disclosable conduct.

## 28 How a public interest disclosure may be made

- (1) A public interest disclosure may be made orally or in writing.
- (2) A public interest disclosure may be made anonymously.
- (3) A public interest disclosure may be made without the discloser asserting that the disclosure is made for the purposes of this Act.
- (4) This section does not apply to a public interest disclosure that is also a NACC disclosure (see subsection 26(1A)).

Note: NACC disclosures are dealt with under the *National Anti-Corruption Commission Act 2022*.

## Subdivision B—Disclosable conduct

### 29 Meaning of *disclosable conduct*

- (1) **Disclosable conduct** is conduct of a kind mentioned in the following table that is conduct:
  - (a) engaged in by an agency; or
  - (b) engaged in by a public official, in connection with his or her position as a public official; or
  - (c) engaged in by a contracted service provider for a Commonwealth contract, in connection with entering into, or giving effect to, that contract.

**Part 2** Protection of disclosers and witnesses

**Division 2** Public interest disclosures

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**Disclosable conduct**

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**Item      Kinds of disclosable conduct**

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|---|--|
| 1 | Conduct that contravenes a law of the Commonwealth, a State or a Territory.  |
| 2 | Conduct, in a foreign country, that contravenes a law that:<br>(a) is in force in the foreign country; and<br>(b) is applicable to the agency, public official or contracted service provider; and<br>(c) corresponds to a law in force in the Australian Capital Territory.   |
| 3 | Conduct that:<br>(a) perverts, or is engaged in for the purpose of perverting, or attempting to pervert, the course of justice; or<br>(b) involves, or is engaged in for the purpose of, corruption of any other kind.   |
| 4 | Conduct that constitutes maladministration, including conduct that:<br>(a) is based, in whole or in part, on improper motives; or<br>(b) is unreasonable, unjust or oppressive; or<br>(c) is negligent.  |
| 5 | Conduct that is an abuse of public trust.  |
| 6 | Conduct that is:<br>(a) fabrication, falsification, plagiarism, or deception, in relation to:<br>(i) proposing scientific research; or<br>(ii) carrying out scientific research; or<br>(iii) reporting the results of scientific research; or<br>(b) misconduct relating to scientific analysis, scientific evaluation or the giving of scientific advice. |
| 7 | Conduct that results in the wastage of:<br>(a) relevant money (within the meaning of the <i>Public Governance, Performance and Accountability Act 2013</i> ); or<br>(b) relevant property (within the meaning of that Act); or<br>(c) money of a prescribed authority; or<br>(d) property of a prescribed authority.                                       |
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**Disclosable conduct**

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**Item      Kinds of disclosable conduct**

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- 8      Conduct that:
- (a) unreasonably results in a danger to the health or safety of one or more persons; or
  - (b) unreasonably results in, or increases, a risk of danger to the health or safety of one or more persons.
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- 9      Conduct that:
- (a) results in a danger to the environment; or
  - (b) results in, or increases, a risk of danger to the environment.
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- 10     Conduct of a kind prescribed by the PID rules.
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(2) Without limiting subsection (1), the following are also **disclosable conduct**:

- (a) conduct engaged in by a public official that involves, or is engaged in for the purpose of, the public official abusing his or her position as a public official;
- (b) conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action resulting in the termination of the official's engagement or appointment.

(2A) Despite subsections (1) and (2), personal work-related conduct is not **disclosable conduct** unless:

- (a) the conduct would constitute taking a reprisal against another person, or an offence under section 19 (reprisals in relation to disclosures—offences); or
- (b) the conduct:
  - (i) is of such a significant nature that it would undermine public confidence in an agency (or agencies); or
  - (ii) has other significant implications for an agency (or agencies).

Note 1:    For **personal work-related conduct**, see section 29A.

Note 2:    For what constitutes **taking a reprisal**, see section 13.

(2B) To avoid doubt, if a disclosure includes information that tends to show (or that may tend to show) disclosable conduct, the

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disclosure is not prevented from being a public interest disclosure only because:

- (a) the disclosure includes other information; and
  - (b) the other information tends to show (or may tend to show) personal work-related conduct.
- (3) For the purposes of this section, it is immaterial:
- (a) whether conduct occurred before or after the commencement of this section; or
  - (b) if an agency has engaged in conduct—whether the agency has ceased to exist after the conduct occurred; or
  - (c) if a public official has engaged in conduct—whether the public official has ceased to be a public official after the conduct occurred; or
  - (d) if a contracted service provider has engaged in conduct—whether the contracted service provider has ceased to be a contracted service provider after the conduct occurred.

**29A Meaning of *personal work-related conduct***

***Personal work-related conduct*** is conduct (by act or omission) engaged in by a public official (the ***first official***) in relation to another public official (the ***second official***) that:

- (a) occurs in relation to, or in the course of, either or both of the following:
  - (i) the second official's engagement or appointment as a public official;
  - (ii) the second official's employment, or exercise of functions and powers, as a public official; and
- (b) has, or would tend to have, personal implications for the second official.

Examples: The following are examples of personal work-related conduct:

- (a) conduct relating to an interpersonal conflict between the first official and the second official (including, but not limited to, bullying or harassment);
- (b) conduct relating to the transfer or promotion of the second official;

- (c) conduct relating to the terms and conditions of engagement or appointment of the second official;
- (d) disciplinary action taken in relation to the second official;
- (e) the suspension or termination of the second official's employment or appointment as a public official;
- (f) conduct in relation to which the second official is, or would have been, entitled to review under section 33 of the *Public Service Act 1999* or under any comparable review process that forms, or formed, part of the second official's terms or conditions of engagement or appointment.

### **30 Officers or employees of a contracted service provider**

- (1) For the purposes of this Act, if an individual is a public official because the individual:
  - (a) is an officer or employee of a contracted service provider for a Commonwealth contract; and
  - (b) provides services for the purposes (whether direct or indirect) of the Commonwealth contract;the individual does not engage in conduct in connection with his or her position as such a public official unless the conduct is in connection with entering into, or giving effect to, the contract.
- (2) A ***contracted service provider*** for a Commonwealth contract is:
  - (a) a person who:
    - (i) is a party to the Commonwealth contract; and
    - (ii) is responsible for the provision of goods or services under the Commonwealth contract; or
  - (b) a person who:
    - (i) is a party to a contract (the ***subcontract***) with a person who is a contracted service provider for the Commonwealth contract under paragraph (a) (or under a previous application of this paragraph); and
    - (ii) is responsible under the subcontract for the provision of goods or services for the purposes (whether direct or indirect) of the Commonwealth contract.
- (3) A ***Commonwealth contract*** is a contract:
  - (a) to which the Commonwealth or an agency is a party; and

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- (b) under which goods or services are to be, or were to be, provided:
  - (i) to the Commonwealth or an agency; or
  - (ii) for or on behalf of the Commonwealth or an agency, and in connection with the performance of its functions or the exercise of its powers.
- (4) However, a **Commonwealth contract** does not include a grant covered by an instrument made under section 105C of the *Public Governance, Performance and Accountability Act 2013* (instruments relating to grants).

**31 Disagreements with government policies etc.**

To avoid doubt, conduct is not **disclosable conduct** if it relates only to:

- (a) a policy or proposed policy of the Commonwealth Government; or
  - (b) action that has been, is being, or is proposed to be, taken by:
    - (i) a Minister; or
    - (ii) the Speaker of the House of Representatives; or
    - (iii) the President of the Senate; or
  - (c) amounts, purposes or priorities of expenditure or proposed expenditure relating to such a policy or proposed policy, or such action or proposed action;
- with which a person disagrees.

**32 Conduct connected with courts or Commonwealth tribunals**

- (1) Despite section 29, conduct is not **disclosable conduct** if it is:
  - (a) conduct of a judicial officer; or
  - (b) conduct of:
    - (i) the chief executive officer of a court; or
    - (ii) a member of the staff of the chief executive officer of a court;

when exercising a power of the court, performing a function of a judicial nature or exercising a power of a judicial nature; or

- (c) conduct of:
- (i) a member of a Commonwealth tribunal; or
  - (ii) the chief executive officer of a Commonwealth tribunal; or
  - (iii) a member of the staff of the chief executive officer of a Commonwealth tribunal;
- when exercising a power of the Commonwealth tribunal; or
- (d) any other conduct of, or relating to, a court or Commonwealth tribunal, unless the conduct:
- (i) is of an administrative nature; and
  - (ii) does not relate to the management or hearing of matters before the court or tribunal.

(2) **Judicial officer** means:

- (a) a Justice of the High Court; or
- (b) a Judge or Justice of a court created by the Parliament; or
- (c) a Judge, Justice or Magistrate of a court of a State or Territory.

(3) **Member of the staff** of the chief executive officer of a court or Commonwealth tribunal means:

- (a) an officer of the court or Commonwealth tribunal (other than the chief executive officer); or
- (b) a member of the staff of the registry or registries of the court or Commonwealth tribunal; or
- (c) an officer or employee of an agency whose services are made available to the court or Commonwealth tribunal; or
- (d) a person prescribed by the PID rules to be a member of the staff of the court or Commonwealth tribunal for the purposes of this Act.

Note: For declaration by class, see subsection 13(3) of the *Legislation Act 2003*.

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- (4) For the purposes of subsection (3):
- (a) a judicial officer of a court is not taken to be an officer of the court; and
  - (b) a member of a Commonwealth tribunal is not taken to be an officer of the tribunal; and
  - (c) if a statutory officeholder is a Commonwealth tribunal—the statutory officeholder is not taken to be an officer of the tribunal.

**33 Conduct connected with intelligence agencies**

Despite section 29, conduct is not *disclosable conduct* if it is:

- (a) conduct that an intelligence agency engages in in the proper performance of its functions or the proper exercise of its powers; or
- (b) conduct that a public official who belongs to an intelligence agency engages in for the purposes of the proper performance of its functions or the proper exercise of its powers.

**Subdivision C—Internal disclosures: authorised internal recipients**

**34 Meaning of *authorised internal recipient***

The following table sets out who is an *authorised internal recipient* of a disclosure of information that the discloser believes on reasonable grounds may concern one or more instances of disclosable conduct.

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<b>Authorised internal recipients</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>If the conduct with which the disclosure is concerned relates to:</b>	<b>An authorised officer of any of the following agencies is an <i>authorised internal recipient</i> of the disclosure:</b>
1	an agency (other than an intelligence agency, the	(a) in any case—that agency; (b) the agency to which the discloser belongs, or

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<b>Authorised internal recipients</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>If the conduct with which the disclosure is concerned relates to:</b>	<b>An authorised officer of any of the following agencies is an <i>authorised internal recipient</i> of the disclosure:</b>
	Ombudsman or the IGIS)	<p>last belonged;</p> <p>(c) if the discloser believes on reasonable grounds that it would be appropriate for the disclosure to be investigated by the Ombudsman—the Ombudsman;</p> <p>(ca) if the discloser believes on reasonable grounds that:</p> <p>(i) the disclosure relates to action taken by ACIC or the Australian Federal Police in relation to that agency’s intelligence functions; and</p> <p>(ii) it would be appropriate for the disclosure to be investigated by the IGIS;</p> <p>the IGIS;</p> <p>(d) if an investigative agency (other than the Ombudsman or the IGIS) has the power to investigate the disclosure otherwise than under this Act—the investigative agency.</p>
2	an intelligence agency	<p>(a) in any case—the intelligence agency;</p> <p>(b) if the discloser believes on reasonable grounds that it would be appropriate for the disclosure to be investigated by the IGIS—the IGIS;</p> <p>(c) if none of the information is intelligence information, and an investigative agency (other than the Ombudsman or the IGIS) has the power to investigate the disclosure otherwise than under this Act—the investigative agency.</p>
3	the Ombudsman	the Ombudsman.
4	the IGIS	the IGIS.

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Note 1: For **authorised officer**, see section 36.

Note 2: A discloser may also disclose information to his or her supervisor (who is then obliged under subsection 60A(3) to give the information to an authorised officer).

### 35 When conduct relates to an agency

#### *Main definition*

- (1) Conduct **relates** to an agency if the agency, or a public official belonging to the agency at the time of the conduct, engages in the conduct.

#### *Conduct by unincorporated subsidiary agencies*

- (2) Despite subsection (1), if:
- (a) an agency (the **subsidiary agency**) is established by or under a law of the Commonwealth for the purpose of assisting, or performing functions connected with, another agency (the **parent agency**); and
  - (b) the subsidiary agency is an unincorporated body that is a board, council, committee, sub-committee or other body;
- conduct that would, apart from this subsection, relate to the subsidiary agency is instead taken, for the purposes of this Act, to relate to the parent agency.

Note: A machinery of government change (the abolition of an agency or a transfer of functions between agencies) may affect how disclosures are handled under this Act: see sections 73A to 73D.

### 36 Meaning of **authorised officer**

An **authorised officer**, of an agency, is:

- (a) the principal officer of the agency; or
- (b) a public official who:
  - (i) belongs to the agency; and
  - (ii) is appointed, in writing, by the principal officer of the agency as an authorised officer for the purposes of this Act.

## **Subdivision D—Intelligence information**

### **41 Meaning of *intelligence information***

- (1) Each of the following is *intelligence information*:
- (a) information that has originated with, or has been received from, an intelligence agency;
  - (b) information that is about, or that might reveal:
    - (i) a source of information referred to in paragraph (a); or
    - (ii) the technologies or methods used, proposed to be used, or being developed for use, by an intelligence agency to collect, analyse, secure or otherwise deal with, information referred to in paragraph (a); or
    - (iii) operations that have been, are being, or are proposed to be, undertaken by an intelligence agency;
  - (c) information:
    - (i) that has been received by a public official from an authority of a foreign government, being an authority that has functions similar to the functions of an intelligence agency; and
    - (ii) that is about, or that might reveal, a matter communicated by that authority in confidence;
  - (d) information that has originated with, or has been received from, the Defence Department and that is about, or that might reveal:
    - (i) the collection, reporting, or analysis of operational intelligence; or
    - (ii) a program under which a foreign government provides restricted access to technology;
  - (e) information that includes a summary of, or an extract from, information referred to in paragraph (a), (b), (c) or (d);
  - (f) information:
    - (i) that identifies a person as being, or having been, an agent or member of the staff (however described) of the Australian Secret Intelligence Service (other than a person referred to in subsection (3)); or

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- (ii) from which the identity of a person who is, or has been, such an agent or member of staff (however described) could reasonably be inferred; or
    - (iii) that could reasonably lead to the identity of such an agent or member of staff (however described) being established;
  - (fa) information:
    - (i) that identifies a person as an ASIO employee (within the meaning of the *Australian Security Intelligence Organisation Act 1979*), an ASIO affiliate (within the meaning of that Act), a former ASIO employee, or a former ASIO affiliate, other than a person referred to in subsection (4); or
    - (ii) from which the identity of such a person could reasonably be inferred; or
    - (iii) that could reasonably lead to the identity of such a person being established;
  - (g) sensitive law enforcement information.
- (2) ***Sensitive law enforcement information*** means information the disclosure of which is reasonably likely to prejudice Australia's law enforcement interests, including Australia's interests in the following:
- (a) avoiding disruption to national and international efforts relating to law enforcement, criminal intelligence, criminal investigation, foreign intelligence, security intelligence or the integrity of law enforcement agencies;
  - (b) protecting the technologies and methods used to collect, analyse, secure or otherwise deal with, criminal intelligence, foreign intelligence, security intelligence or intelligence relating to the integrity of law enforcement agencies;
  - (c) the protection and safety of:
    - (i) informants or witnesses, or persons associated with informants or witnesses; or
    - (ii) persons involved in the protection and safety of informants or witnesses;

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- (d) ensuring that intelligence and law enforcement agencies are not discouraged from giving information to a nation's government and government agencies.
- (3) Paragraph (1)(f) does not apply to the Director-General of ASIS, or a person who has been determined by the Director-General of ASIS under this subsection.
- (4) Paragraph (1)(fa) does not apply to the Director-General of Security, or a person who has been determined by the Director-General of Security under this subsection.

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## **Part 3—Investigations**

### **Division 1—Allocating the handling of disclosures**

#### **42 Simplified outline**

The following is a simplified outline of this Division:

If a disclosure is made to an authorised officer of an agency (either directly by the discloser or through a supervisor of the discloser), he or she allocates the handling of the disclosure to one or more agencies.

A stop action direction under the NACC Act may prevent the allocation of some or all of a disclosure.

Note 1: In order for a disclosure to be an internal disclosure (one of the types of public interest disclosure), the disclosure must be made to an authorised officer or a supervisor.

Note 2: The way a disclosure is allocated (or a refusal to allocate a disclosure) may be the subject of a complaint to the Ombudsman under the *Ombudsman Act 1976*, or (in the case of an intelligence agency, or ACIC or the Australian Federal Police in relation to that agency's intelligence functions) to the IGIS under the *Inspector-General of Intelligence and Security Act 1986*.

#### **43 Allocation of disclosure—decision by authorised officer**

*Scope—disclosers*

- (1) This section applies in relation to a person (the **discloser**) if:
  - (a) the discloser discloses information to an authorised officer of an agency (the **recipient agency**); or
  - (b) the discloser discloses information to the discloser's supervisor, who then gives the information to an authorised officer of an agency (also the **recipient agency**) under subsection 60A(3).

*Scope—decisions and previous decisions*

- (2) This section applies in relation to a decision about the allocation of a disclosure if:
- (a) a decision has not yet been made about the allocation; or
  - (b) in a case in which the disclosure had already been allocated—a decision is made under section 45 to reallocate the disclosure to one or more agencies (which may include an agency to which the disclosure had formerly been allocated).

Example: One situation in which a disclosure may be reallocated under section 45 is in response to a recommendation by the Ombudsman or the IGIS under section 55.

*Allocation*

- (3) An authorised officer of the recipient agency must:
- (a) allocate the disclosure to one or more agencies (which may or may not be the recipient agency); or
  - (b) if subsection (4) applies—decide not to allocate the disclosure to any agency.

Note 1: The authorised officer who allocates a disclosure need not be the authorised officer to whom the disclosure was made or given.

Note 2: If the disclosure is subject to a stop action direction under the NACC Act, it cannot be allocated under this section (see subsections (11) and (12)).

- (4) This subsection applies if the authorised officer is satisfied on reasonable grounds that:
- (a) there is no reasonable basis on which the disclosure could be considered an internal disclosure (see section 26); or
  - (b) the conduct disclosed would be more appropriately investigated under another law or power.
- (4A) However, the authorised officer cannot be satisfied under paragraph (4)(b) that the conduct disclosed would be more appropriately investigated under another law or power only because the conduct disclosed raises a corruption issue.

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Note: Disclosures that raise a corruption issue can continue to be handled in accordance with this Part, subject to a stop action direction under the NACC Act. See section 39 (effect of referral on continued actions) of the *National Anti-Corruption Commission Act 2022*.

- (4B) To avoid doubt, if a disclosure includes information that tends to show (or that may tend to show) disclosable conduct, there might be a reasonable basis on which the disclosure could be considered to be an internal disclosure even if:
- (a) the disclosure includes other information; and
  - (b) the other information tends to show (or may tend to show) personal work-related conduct.

Note: A disclosure may include information relating to a number of instances of conduct, some of which may be considered disclosable conduct, and some of which may not (for example, because that conduct is personal work-related conduct). Paragraph (4)(a) does not apply if one or more of those instances provide a reasonable basis on which the disclosure could be an internal disclosure under section 26.

#### *Relevant considerations*

- (5) In making a decision under subsection (3) in relation to the allocation of a disclosure, the authorised officer must have regard to:
- (a) the principle that an agency should not handle the disclosure unless one or more of the following circumstances apply:
    - (i) in any case—some or all of the conduct disclosed relates to the agency;
    - (ii) if the agency is the Ombudsman—some or all of the conduct disclosed relates to an agency other than an intelligence agency, or ACIC or the Australian Federal Police in relation to that agency's intelligence functions or the IGIS;
    - (iii) if the agency is the IGIS—some or all of the conduct disclosed relates to an intelligence agency, or ACIC or the Australian Federal Police in relation to that agency's intelligence functions;
    - (iv) if the agency is an investigative agency (other than the Ombudsman or the IGIS)—the investigative agency has

- power to investigate the disclosure otherwise than under this Act; and
- (b) any other matters the authorised officer considers relevant, including:
- (i) whether subsection (8) applies (which deals with the allocation of a disclosure within the same portfolio as the recipient agency); and
  - (ii) any recommendation of the Ombudsman or the IGIS under section 55 about the allocation of the disclosure.
- (6) Before making the decision, the authorised officer must also consider whether the obligation in subsection 60(1) (which is about informing the discloser of certain matters) has been satisfied in relation to the disclosure.

*Disclosures involving examiners of ACIC*

- (7) The authorised officer must not allocate a disclosure to the IGIS if the disclosure relates to action taken by an examiner of ACIC performing functions and exercising powers as an examiner.

*Allocation to agency in same portfolio as the recipient agency*

- (8) Without limiting the powers of the authorised officer under this section, the authorised officer may allocate the disclosure to another agency in the same portfolio as the recipient agency (for example, the recipient agency's portfolio Department) if the authorised officer considers that the other agency would be better able to handle the disclosure.

Note: The disclosure cannot be allocated to an agency other than the recipient agency without the consent of the other agency, or (if the allocation is made by an authorised officer belonging to an investigative agency) consultation with the other agency: see subsection (9).

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*Agency consultation or consent*

- (9) The authorised officer may allocate the disclosure to an agency other than the recipient agency only if:
- (a) in a case in which the authorised officer belongs to an investigative agency—the authorised officer has consulted with an authorised officer in the agency to which the disclosure is to be allocated; or
  - (b) in any other case—an authorised officer in the agency to which the disclosure is to be allocated has consented to the allocation.

*Obtaining information*

- (10) For the purposes of making a decision about the allocation of the disclosure, the authorised officer may obtain information from such persons, and make such inquiries, as the authorised officer thinks fit.

Note: This subsection authorises an authorised officer to obtain information, and to make inquiries, only for the purposes of deciding to which agency (if any) a disclosure is to be allocated.

*14-day deadline*

- (11) The authorised officer must use the officer's best endeavours to make a decision about the allocation of the disclosure within 14 days after whichever of the following days applies:
- (a) if no previous decision has been made about the allocation—the day the disclosure is made or given to an authorised officer;
  - (b) if the decision is made following the reconsideration of a previous decision about the allocation in response to a recommendation by the Ombudsman or the IGIS under section 55—the day the principal officer of the recipient agency receives the recommendation under that section;
  - (c) to the extent that a stop action direction under the NACC Act prevented the allocation of the disclosure—the day when the

authorised officer becomes aware that the direction no longer applies.

*Stop action direction under the NACC Act*

- (12) This section has effect subject to any stop action direction under the NACC Act.

Note: An authorised officer who is prevented from allocating a disclosure by such a direction must notify the Ombudsman or the IGIS, as relevant (see section 44B).

#### **44 Allocation of disclosure—notice of decision to allocate**

*Scope*

- (1) This section applies if an authorised officer decides under paragraph 43(3)(a) to allocate a disclosure to an agency.

*Notice of decision*

- (2) The authorised officer must, as soon as reasonably practicable, give written notice to each person or agency covered by subsection (3) of this section of the following matters:
- (a) the allocation to the agency;
  - (b) the information that was disclosed;
  - (c) the conduct disclosed;
  - (d) if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the persons and agencies covered by subsection (3) being informed—the discloser's name and contact details.
- (3) This subsection covers the following persons and agencies:
- (a) the principal officer of each agency to which the disclosure is allocated;
  - (b) the Ombudsman, if the disclosure is allocated to an agency other than:
    - (i) the Ombudsman; or
    - (ii) the IGIS; or

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- (iii) an intelligence agency; or
    - (iv) ACIC or the Australian Federal Police in relation to that agency's intelligence functions;
  - (c) the IGIS, if the recipient agency (under subsection 43(1)) is, or the disclosure is allocated to:
    - (i) an intelligence agency; or
    - (ii) ACIC or the Australian Federal Police in relation to that agency's intelligence functions.
- (4) If reasonably practicable, the authorised officer must give a copy of the notice under subsection (2) to the discloser as soon as reasonably practicable.

**44A Allocation of disclosure—decision not to allocate**

*Scope*

- (1) This section applies if an authorised officer of an agency decides, under paragraph 43(3)(b), not to allocate a disclosure to any agency.

*Referral of conduct for investigation under another law or power*

- (2) If the authorised officer is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power, the authorised officer must, as soon as reasonably practicable, take reasonable steps to refer the conduct disclosed, or to facilitate its referral, for investigation under the other law or power.

*Notice of decision not to allocate disclosure*

- (3) As soon as reasonably practicable after making the decision not to allocate the disclosure, the authorised officer of the agency must:
  - (a) if reasonably practicable, give written notice to the discloser of:
    - (i) the decision not to allocate the disclosure, and the reasons for the decision; and

- (ii) if the authorised officer has taken action, or proposes to take action, under subsection (2)—the details of the action taken or proposed; and
  - (iii) if subparagraph (ii) does not apply—any courses of action that might be available to the discloser under another law or power; and
- (b) except to the extent, if any, to which the conduct disclosed relates to an intelligence agency, or ACIC or the Australian Federal Police in relation to that agency's intelligence functions—give written notice to the Ombudsman of:
- (i) the decision not to allocate the disclosure, and the reasons for the decision; and
  - (ii) whether the authorised officer has taken action, or proposes to take action, under subsection (2); and
  - (iii) if the authorised officer has taken, or proposes to take, such action—the details of such action; and
- (c) to the extent, if any, to which the conduct disclosed relates to an intelligence agency, or ACIC or the Australian Federal Police in relation to that agency's intelligence functions—give written notice to the IGIS of:
- (i) the decision not to allocate the disclosure, and the reasons for the decision; and
  - (ii) whether the authorised officer has taken action, or proposes to take action, under subsection (2); and
  - (iii) if the authorised officer has taken, or proposes to take, such action—the details of such action.

*Details of action in relation to referral*

- (4) For the purposes of subsection (3), the details of action taken, or proposed to be taken, under subsection (2) in relation the referral of the conduct disclosed for investigation under another law or power must include details of the following:
- (a) the other law or power;
  - (b) the agency or other person or body to which the conduct has been, or is to be, referred;

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- (c) the steps taken, or proposed to be taken, for the conduct to be referred or to facilitate its referral.

**44B Non-allocation of disclosure subject to stop action direction under the NACC Act**

*Scope*

- (1) This section applies if a stop action direction under the NACC Act prevents an authorised officer of an agency from allocating some or all of a disclosure under section 43.

*Notice of details relating to disclosure*

- (2) The authorised officer must, as soon as reasonably practicable, give written notice of the matters in subsection (3) to:
  - (a) the Ombudsman (unless paragraph (b) of this subsection applies); or
  - (b) the IGIS, if the disclosure concerns conduct relating to:
    - (i) an intelligence agency; or
    - (ii) the IGIS; or
    - (iii) ACIC or the Australian Federal Police in relation to that agency's intelligence functions.
- (3) The following are the matters for the purposes of subsection (2):
  - (a) the information that was disclosed;
  - (b) the conduct disclosed;
  - (c) if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the Ombudsman or the IGIS, as relevant, being informed—the discloser's name and contact details;
  - (d) the stop action direction under the NACC Act that prevents allocation of some or all of the disclosure.

## **45 Reallocation of disclosures**

- (1) The authorised officer may, after making a decision under section 43 or this section (the *original decision*) allocating the disclosure, decide to reallocate the disclosure to one or more agencies (which may include an agency to which the disclosure had formerly been allocated).
- (2) Subsections 43(5) to (12) and section 44 apply in relation to a decision under this section in the same way that they apply in relation to the original decision.

## **45A Conduct related to intelligence agencies and agencies with intelligence functions—notice to the IGIS**

### *Scope*

- (1) This section applies if:
  - (a) an authorised officer receives a disclosure that is:
    - (i) made to the authorised officer; or
    - (ii) made to a supervisor of a public official and given to the authorised officer; and
  - (b) the information disclosed concerns conduct alleged to be related to:
    - (i) an intelligence agency; or
    - (ii) ACIC or the Australian Federal Police in relation to that agency's intelligence functions.

### *Urgent notice within 1 business day*

- (2) If the discloser declares to the authorised officer or supervisor that the disclosure is urgent, the authorised officer must, as soon as reasonably practicable and in any case within 1 business day after the disclosure is received by the authorised officer, give a written notice to the IGIS of the following matters:
  - (a) the making of the disclosure;
  - (b) the agency to which the authorised officer belongs;

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- (c) that the discloser has declared that the disclosure is urgent;
- (d) the information that was disclosed;
- (e) the conduct that was disclosed;
- (f) if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the IGIS being informed—the discloser's name and contact details.

*Notice in other cases within 14 days*

- (3) If the discloser does not declare that the disclosure is urgent, the authorised officer must, as soon as reasonably practicable before the end of 14 days after the disclosure is received by the authorised officer, give a written notice to the IGIS of the matters mentioned in paragraphs (2)(a), (b), (d), (e) and (f).

*Subsequent notices*

- (4) If the disclosure is investigated under Division 2, the principal officer of the agency to which the disclosure is allocated must give regular written notice to the IGIS about the following matters:
  - (a) the progress of the investigation;
  - (b) the anticipated time remaining before the investigation is completed;
  - (c) the likelihood of any extension, or further extension, of the time for completion of the investigation being required under subsection 52(4).

## Division 2—The obligation to investigate disclosures

### 46 Simplified outline

The following is a simplified outline of this Division:

The principal officer of the allocated agency must investigate the disclosure, and prepare a report, within a set time and in accordance with the requirements of this Division.

However, a stop action direction under the NACC Act may prevent the investigation of some or all of the disclosure.

The principal officer may decide not to investigate in particular circumstances in which an investigation is unjustified, or if the agency is an investigative agency that can investigate without using this Act.

Note: The way a disclosure is investigated (or a refusal to investigate a disclosure) may be the subject of a complaint to the Ombudsman under the *Ombudsman Act 1976*, or (in the case of an intelligence agency, or ACIC or the Australian Federal Police in relation to that agency's intelligence functions) to the IGIS under the *Inspector-General of Intelligence and Security Act 1986*.

### 47 Principal officer must investigate disclosures

- (1) The principal officer of an agency must investigate a disclosure if the disclosure is allocated to the agency under Division 1.
- (2) **Investigate**, in relation to a disclosure, means investigate (or reinvestigate) whether there are one or more instances of disclosable conduct. The disclosable conduct may relate to:
  - (a) the information that is disclosed; or
  - (b) information obtained in the course of the investigation, unless the principal officer conducting the investigation is satisfied on reasonable grounds that such information is tangential or remote to the disclosure.

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Note 1: A disclosure may be reinvestigated in response to a recommendation by the Ombudsman or the IGIS under section 55.

Note 2: If the principal officer of the agency does not investigate information mentioned in paragraph (b) in the investigation of the disclosure, the principal officer may choose to investigate the information disclosed otherwise than under this Act.

- (3) For the purposes of subsection (2), an investigation (or reinvestigation) may include consideration of whether a different investigation (or reinvestigation) should be conducted by the agency, or another body, under another law or power.

#### *Stop action directions under the NACC Act*

- (4) This section has effect subject to any stop action direction under the NACC Act.

### 48 Discretion not to investigate

- (1) Despite section 47, the principal officer of the agency may decide not to investigate the disclosure, or (if the investigation has started) not to investigate the disclosure further, if:
- (a) the discloser is not, and has not been, a public official; or
  - (c) the information does not, to any extent, concern serious disclosable conduct; or
  - (d) the disclosure is frivolous or vexatious; or
  - (e) the information is the same, or substantially the same, as information previously disclosed under this Act, and:
    - (i) a decision was previously made under this subsection not to investigate the earlier disclosure, or not to investigate the earlier disclosure further; or
    - (ii) the earlier disclosure has been, or is being, investigated as a disclosure investigation; or
  - (f) the conduct disclosed, or substantially the same conduct, is being investigated under another law or power, and the principal officer is satisfied, on reasonable grounds, that it would be inappropriate to conduct an investigation under this Act at the same time; or

- (g) the conduct disclosed, or substantially the same conduct, has been investigated under another law or power, and the principal officer is satisfied, on reasonable grounds, that there are no further matters concerning the conduct that warrant investigation; or
  - (ga) the principal officer is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power (but see subsection (1A)); or
  - (h) both:
    - (i) the principal officer of the agency has been informed by the discloser, an authorised officer of the agency or a principal officer or authorised officer of another agency that the discloser does not wish the investigation of the disclosure to be pursued; and
    - (ii) the first-mentioned principal officer is satisfied, on reasonable grounds, that there are no matters concerning the disclosure that warrant investigation; or
  - (i) it is impracticable for the disclosure to be investigated:
    - (i) because the discloser's name and contact details have not been disclosed; or
    - (ii) because the discloser refuses or fails, or is unable, to give, for the purposes of the investigation, such information or assistance as the person who is or will be conducting the investigation asks the discloser to give; or
    - (iii) because of the age of the information.
- (1A) However, the principal officer cannot be satisfied under paragraph (1)(ga) that the conduct disclosed would be more appropriately investigated under another law or power only because the conduct disclosed raises a corruption issue.

Note: Disclosures that raise a corruption issue can continue to be handled in accordance with this Part, subject to a stop action direction under the NACC Act. See section 39 (effect of referral on continued actions) of the *National Anti-Corruption Commission Act 2022*.

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- (2) If the principal officer decides not to investigate the disclosure, or not to investigate it further, this Act does not, by implication, prevent the information from being investigated otherwise than under this Act.

**49 Investigative agency using separate investigative powers**

- (1) Despite section 47, if the agency is an investigative agency that has a separate investigative power in relation to the disclosure, the principal officer of the agency may decide:
- (a) to investigate the disclosure under that separate investigative power; and
  - (b) not to investigate the disclosure, or (if the investigation has started) not to investigate the disclosure further, under this Act.

- (2) A ***separate investigative power***, in relation to the disclosure, is a power that an investigative agency has, otherwise than under this Act, to investigate the disclosure.

Note 1: Under the *Ombudsman Act 1976*, the Ombudsman has power to investigate a disclosure allocated to the Ombudsman.

Note 2: Under the *Inspector-General of Intelligence and Security Act 1986*, the IGIS has power to investigate a disclosure allocated to the IGIS.

- (3) On completing its investigation of the disclosure under its separate investigative power, the investigative agency must inform:
- (a) the principal officers of each of the agencies to which any of the conduct disclosed relates; and
  - (b) the discloser;
- that the investigation is complete.
- (4) Paragraph (3)(b) does not apply if contacting the discloser is not reasonably practicable.

## 50 Notification to discloser

- (1) The principal officer of the agency must, as soon as reasonably practicable, give written notice to the discloser of the following (whichever is applicable):
  - (a) that the principal officer is required to investigate the disclosure;
  - (b) that the principal officer has decided under section 48 or 49 not to investigate the disclosure under this Division, or not to investigate the disclosure further;
  - (c) that the principal officer cannot investigate, or further investigate, the disclosure because of a stop action direction under the NACC Act.
- (1A) If paragraph (1)(a) applies, the principal officer must give written notice to the discloser of the estimated length of the investigation.
- (2) If paragraph (1)(b) applies, the principal officer must give written notice to the discloser of:
  - (a) the reasons for the decision; and
  - (b) if the principal officer has taken action, or proposes to take action, under section 50AA in relation to the referral of the conduct disclosed for investigation under another law or power—details of the following:
    - (i) the other law or power;
    - (ii) the agency or other person or body to which the conduct has been, or is to be, referred;
    - (iii) the steps taken, or proposed to be taken, for the conduct to be referred or to facilitate its referral.
- (3) Despite paragraph (2)(a), the principal officer may delete from the reasons given to the discloser any reasons that would, if contained in a document, cause the document:
  - (a) to be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*; or
  - (b) to have, or be required to have, a national security or other protective security classification; or

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- (c) to contain intelligence information.
- (4) The discloser may be notified of a matter under this section (other than subsection (4A)) in the copy of the notice given to the discloser under subsection 44(4).
- (4A) The principal officer must, as soon as reasonably practicable, give written notice to the discloser if the principal officer investigates, or further investigates, a disclosure that is no longer subject to a stop action direction under the NACC Act.
- (5) This section does not apply if contacting the discloser is not reasonably practicable.

**50AA Decision not to investigate—referral for investigation under another law or power**

*Scope*

- (1) This section applies if the principal officer of the agency:
  - (a) decides under section 48 not to investigate the disclosure, or not to investigate the disclosure further; and
  - (b) does not decide to investigate the disclosure under a separate investigative power (as mentioned in section 49); and
  - (c) is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power (other than a separate investigative power).

*Referral of conduct*

- (2) The principal officer must, as soon as reasonably practicable, take reasonable steps to refer the conduct disclosed, or to facilitate its referral, for investigation under the other law or power.

### **50A Notification to Ombudsman or IGIS about investigation**

- (1) If:
- (a) the principal officer of the agency has decided under section 48 or 49 not to investigate the disclosure under this Division, or not to investigate the disclosure further; and
  - (b) the agency is not the Ombudsman, the IGIS or an intelligence agency; and
  - (c) if the agency is ACIC or the Australian Federal Police—the disclosure does not relate to the intelligence functions of the agency;
- the principal officer must, as soon as reasonably practicable, give written notice to the Ombudsman of the decision, and of the reasons for the decision.

- (2) If:
- (a) the principal officer of the agency has decided under section 48 or 49 not to investigate the disclosure under this Division, or not to investigate the disclosure further; and
  - (b) either:
    - (i) the agency is an intelligence agency; or
    - (ii) the agency is ACIC or the Australian Federal Police, and the disclosure relates to the intelligence functions of the agency;
- the principal officer must, as soon as reasonably practicable, give written notice to the IGIS of the decision, and of the reasons for the decision.

- (3) The notice under subsection (1) or (2) must:
- (a) indicate whether the principal officer has taken action, or proposes to take action, under section 50AA in relation to the referral of the conduct disclosed for investigation under another law or power; and
  - (b) if the principal officer has taken, or proposes to take, such action—include details of the following:
    - (i) the other law or power;

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- (ii) the agency or other person or body to which the conduct has been, or is to be, referred;
  - (iii) the steps taken, or proposed to be taken, for the conduct to be referred or to facilitate its referral.
- (4) If a stop action direction under the NACC Act prevents the principal officer of the agency from investigating, or further investigating, the disclosure under this Division, the principal officer must, as soon as reasonably practicable, give written notice of the stop action direction to:
  - (a) the Ombudsman (unless paragraph (b) applies); or
  - (b) the IGIS, if the disclosure concerns conduct relating to:
    - (i) an intelligence agency; or
    - (ii) the IGIS; or
    - (iii) ACIC or the Australian Federal Police in relation to that agency's intelligence functions.

**51 Report of investigation**

- (1) On completing an investigation under this Division, the principal officer of the agency must prepare a report of the investigation.
- (2) The report must set out:
  - (a) the matters considered in the course of the investigation; and
  - (b) the duration of the investigation; and
  - (c) the principal officer's findings (if any); and
  - (d) the action (if any) that has been, is being, or is recommended to be, taken; and
  - (e) claims of any reprisal taken against the discloser, or any other person, that relates to the matters considered in the course of the investigation, together with any related evidence; and
  - (f) the agency's response to any claims or evidence mentioned in paragraph (e).

Note 1: For the purposes of paragraph (d), the report might include, for example, a recommendation that an investigation be conducted, under procedures established under subsection 15(3) of the *Public Service*

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*Act 1999*, into whether an APS employee has breached the Code of Conduct under that Act.

Note 2: See also section 54 (adoption of findings of another investigation).

- (3) In preparing the report, the principal officer must comply with any standards in force under section 74.
- (4) The principal officer must, within a reasonable time after preparing the report, give written notice of the completion of the investigation, together with a copy of the report, to:
  - (a) the discloser, if reasonably practicable; and
  - (b) the Ombudsman, unless paragraph (c) applies; and
  - (c) the IGIS, if:
    - (i) the principal officer's agency is an intelligence agency; or
    - (ii) the principal officer's agency is ACIC or the Australian Federal Police and the report relates to that agency's intelligence functions.

Note: Another situation in which the copy of the report may be shared is if the investigation concerns conduct related to another agency. Section 65 may authorise such sharing, but does not limit the extent to which the sharing may be authorised or permitted under law.

- (5) The principal officer may delete from the copy given to the discloser any material:
  - (a) that is likely to enable the identification of the discloser or another person; or
  - (b) the inclusion of which would:
    - (i) result in the copy being a document that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982*; or
    - (ii) result in the copy being a document having, or being required to have, a national security or other protective security classification; or
    - (iii) result in the copy containing intelligence information; or
    - (iv) contravene a designated publication restriction.

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- (6) The principal officer may delete from a copy of the report given to the Ombudsman or the IGIS any material:
  - (a) that is likely to enable the identification of the discloser or another person; or
  - (b) the inclusion of which would contravene a designated publication restriction.

**52 Time limit for investigations under this Division**

- (1) An investigation under this Division must be completed within 90 days after:
  - (a) in the case of an investigation following the initial allocation of the disclosure to the agency concerned—the day when the disclosure was initially allocated; or
  - (b) in the case of an investigation following the reallocation of the disclosure to the agency concerned—the day when the disclosure was reallocated; or
  - (c) in the case of a reinvestigation—the day when the principal officer of the agency concerned decided to reinvestigate the relevant disclosure; or
  - (d) to the extent that a stop action direction under the NACC Act prevented the investigation—the day when the principal officer becomes aware that the direction no longer applies.

Example: One situation in which a disclosure may be reallocated, or reinvestigated, is in response to a recommendation by the Ombudsman or the IGIS under section 55.

- (2) The investigation is *completed* when the principal officer has prepared the report of the investigation.
- (3) If the agency is not the IGIS or an intelligence agency, the Ombudsman may extend, or further extend, the 90-day period by such additional period (which may exceed 90 days) as the Ombudsman considers appropriate:
  - (a) on the Ombudsman's own initiative; or
  - (b) if the agency is not the Ombudsman—on application made by the principal officer of the agency; or

- (c) on application made by the discloser.
- (4) If:
  - (a) the agency is the IGIS or an intelligence agency; or
  - (b) the agency is ACIC or the Australian Federal Police, and the disclosure relates to the intelligence functions of the agency; the IGIS may extend, or further extend, the 90-day period by such additional period (which may exceed 90 days) as the IGIS considers appropriate:
    - (c) on the IGIS's own initiative; or
    - (d) if the agency is not the IGIS—on application made by the principal officer of the agency; or
    - (e) on application made by the discloser.
- (5) If the 90-day period is extended, or further extended:
  - (a) the Ombudsman or the IGIS, as the case may be, must inform the discloser of the extension or further extension, and of the reasons for the extension or further extension; and
  - (b) the principal officer of the agency must, as soon as reasonably practicable after the extension or further extension, inform the discloser of the progress of the investigation.
- (5A) Subsection (5) does not apply if contacting the discloser is not reasonably practicable.
- (6) Failure to complete the investigation within the time limit under this section does not affect the validity of the investigation.

### **53 Conduct of investigations under this Division**

- (1) An investigation under this Division by the principal officer of an agency is to be conducted as the person thinks fit.
- (2) The principal officer may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as the principal officer thinks fit.

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- (3) Despite subsections (1) and (2), in conducting the investigation, the principal officer must comply with any standards in force under section 74.
- (4) Despite subsections (1) and (2), the principal officer must act in accordance with any rules relating to fraud that are made for the purposes of the *Public Governance, Performance and Accountability Act 2013*, to the extent that:
  - (a) the investigation relates to one or more instances of fraud; and
  - (b) those rules are not inconsistent with this Act (apart from subsections (1) and (2)).

**54 Adoption of findings of another investigation**

The principal officer conducting an investigation under this Division may, for the purposes of the investigation, adopt a finding set out in the report of:

- (a) an investigation or inquiry under another law or power; or
- (b) another investigation under this Division.

## Division 3—Miscellaneous

### 55 The Ombudsman and the IGIS—recommendations

#### *Scope*

- (1) This section applies if the Ombudsman or the IGIS (the *relevant investigative agency*):
- (a) under subsection 44(2)—is notified of the allocation of a disclosure to an agency; or
  - (b) under subsection 44A(3)—is notified of a decision not to allocate a disclosure to any agency; or
  - (c) under section 50A—is notified by the principal officer of an agency of a decision not to investigate a disclosure under Division 2, or not to investigate a disclosure further under that Division; or
  - (d) under subsection 51(4)—is notified of the completion of an investigation under Division 2 in relation to a disclosure; or
  - (e) receives a complaint under the *Ombudsman Act 1976* or the *Inspector-General of Intelligence and Security Act 1986* (as the case may be) about the handling by an agency of a disclosure.
- Note: For matters in relation to disclosures under this Act that may be the subject of complaints to the Ombudsman or the IGIS, see sections 7A and 7B.
- (2) If this section applies because of a complaint mentioned in paragraph (1)(e), the section does not affect any duty, power or function the relevant investigative agency has in relation to that complaint under the relevant Act mentioned in that paragraph.
- Note: The powers set out in subsections (3) to (6) are in addition to any powers the Ombudsman or the IGIS has under the relevant Act.

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*Review by the Ombudsman or the IGIS*

- (3) The relevant investigative agency may review the handling of the disclosure by any or all of the following:
- (a) if the disclosure was made to a supervisor of the discloser—the supervisor;
  - (b) the authorised officer to whom the disclosure was made or given;
  - (c) the principal officer of an agency to which the disclosure was allocated;
  - (d) any other public official involved in handling the disclosure.
- (4) For the purposes of the review, the relevant investigative agency may obtain information or documents from such persons, and make such inquiries, as that relevant investigative agency thinks fit.

*Review recommendations*

- (5) As a result of the review, the relevant investigative agency may, by written notice, make such recommendations as the relevant investigative agency thinks fit to either or both of the following:
- (a) the principal officer of the agency in which the disclosure was made;
  - (b) the principal officer of an agency to which the disclosure was allocated.

Note: However, the relevant investigative agency is not required to make recommendations as a result of the review.

- (6) Without limitation, recommendations under subsection (5) may include any or all of the following:
- (a) a recommendation that the disclosure should be allocated;
  - (b) a recommendation that the disclosure should be reallocated to a different agency or agencies;
  - (c) a recommendation that the disclosure should be investigated;
  - (d) a recommendation that the disclosure should be reinvestigated by the same or a different agency;

- (e) a recommendation that any other action be taken in relation to:
  - (i) the disclosure or its handling; or
  - (ii) the discloser, any supervisor of the discloser, any authorised officer of an agency or any public official belonging to an agency.

*Response by principal officer*

- (7) A principal officer may respond to any recommendations under subsection (5) as the principal officer thinks fit, including by doing any or all of the following:
  - (a) directing the allocation (or reallocation) of the disclosure;
  - (b) investigating (or reinvestigating) the disclosure;
  - (c) taking any other action in relation to the handling of the disclosure.
- (8) A principal officer must, as soon as reasonably practicable, give written notice to the relevant investigative agency of:
  - (a) any action taken, or proposed to be taken, in response to a recommendation by the agency under subsection (5); and
  - (b) if no action is proposed to be taken in response to such a recommendation—the reason why no such action has been taken or is proposed.

## **56 Disclosure to a member of an Australian police force**

*Scope*

- (1) This section applies if, in the course of a disclosure investigation, the person (the **investigator**) conducting the investigation suspects on reasonable grounds that information (the **relevant information**), consisting of all or part of any of the following information, is evidence of the commission of an offence against a law of the Commonwealth, a State or a Territory:
  - (a) the information disclosed;

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- (b) any other information obtained in the course of the investigation.

*Power to give information to police*

- (2) The investigator may give the relevant information to a member of an Australian police force responsible for the investigation of the offence.

*Duty to give information to police*

- (3) However, if the investigator suspects on reasonable grounds that the offence is punishable by imprisonment for life or by imprisonment for a period of at least 2 years, the investigator must give the relevant information to a member of an Australian police force responsible for the investigation of the offence.

- (4) However, subsection (3) does not apply:

- (a) if the investigator believes on reasonable grounds that the agency to which the investigator belongs has the capacity and the appropriate skills and resources needed:

- (i) to investigate the commission of the offence; and
- (ii) to meet the requirements of the Commonwealth Director of Public Prosecutions in gathering evidence and preparing briefs of evidence in relation to the commission of the offence; or

- (b) if the investigator suspects on reasonable grounds that the relevant information raises a corruption issue (within the meaning of the *National Anti-Corruption Commission Act 2022*) and:

- (i) the corruption issue has been referred under that Act to the person or agency mentioned in subsection (4A); or
- (ii) that person or agency is already aware of the issue.

- (4A) For the purposes of paragraph (4)(b), the person or agency is:

- (a) the National Anti-Corruption Commissioner; or
- (b) the IGIS, if the corruption issue concerns:
  - (i) an intelligence agency; or

- (ii) ACIC or the Australian Federal Police in relation to that agency's intelligence functions.

*No limitation on power to notify police*

- (5) This section does not, by implication, limit a person's power to notify a matter to a member of an Australian police force.

## Part 4—Administrative matters

### Division 1—Additional obligations and functions

#### 58 Simplified outline

The following is a simplified outline of this Division:

This Division promotes the operation of this Act by imposing additional obligations on principal officers, authorised officers, supervisors and public officials, and by conferring additional functions on the Ombudsman and the IGIS.

Note: The way the additional obligations are complied with (or non-compliance with the additional obligations) may be the subject of a complaint to the Ombudsman under the *Ombudsman Act 1976*, or (in the case of an intelligence agency, or ACIC or the Australian Federal Police in relation to that agency's intelligence functions) to the IGIS under the *Inspector-General of Intelligence and Security Act 1986*.

#### 59 Additional obligations of principal officers

##### *Facilitating public interest disclosures*

- (1) The principal officer of an agency must take reasonable steps to ensure that:
  - (a) the number of authorised officers of the agency is sufficient to ensure that they are readily accessible by public officials who belong to the agency; and
  - (b) public officials who belong to the agency are aware of the identity of each authorised officer of the agency.
- (2) The principal officer of an agency must take reasonable steps to encourage and support:
  - (a) public officials who make, or are considering making, public interest disclosures relating to the agency; and

- (b) any other persons who provide, or are considering providing, assistance in relation to such public interest disclosures.

*Procedures for dealing with public interest disclosures*

- (3) The principal officer of an agency must, by instrument in writing, establish procedures for facilitating and dealing with public interest disclosures relating to the agency.
- (4) The procedures must:
  - (a) deal with the assessment of risks that reprisals may be taken in relation to those disclosures; and
  - (b) provide for confidentiality of investigative processes; and
  - (c) comply with any standards in force under subsection 74(1).
- (5) An instrument under subsection (3) is not a legislative instrument.

*Responding to investigations*

- (6) The principal officer of an agency must, as soon as reasonably practicable, ensure that appropriate action in relation to the agency is taken in response to any recommendations in a report under section 51.

*Training and education*

- (7) The principal officer of an agency must take reasonable steps to provide ongoing training and education to public officials belonging to the agency about this Act including, without limitation, training and education about the following:
  - (a) integrity and accountability;
  - (b) how to make a public interest disclosure;
  - (c) the protections available under this Act;
  - (d) the performance by those officials of their functions under this Act;
  - (e) the circumstances (if any) in which a public interest disclosure must be referred to an agency, or other person or body, under another law of the Commonwealth.

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- (8) The principal officer of an agency must take reasonable steps to ensure that a public official belonging to the agency who is appointed to a position that requires, or could require, the public official to perform the functions or duties, or exercise the powers, of an authorised officer or supervisor under this Act is given training and education appropriate for the position within a reasonable time after that appointment.

*Duty to protect public officials against reprisals*

- (9) The principal officer of an agency must take reasonable steps to protect public officials who belong to the agency against reprisals that have been, or may be, taken in relation to public interest disclosures that:
- (a) have been made; or
  - (b) may have been made; or
  - (c) are proposed to be made; or
  - (d) could be made;
- to an authorised officer or a supervisor belonging to the agency.

**60 Additional obligations of authorised officers**

- (1) If:
- (a) an individual discloses, or proposes to disclose, information to an authorised officer of an agency; and
  - (b) the authorised officer has reasonable grounds to believe that:
    - (i) the information concerns, or could concern, disclosable conduct; and
    - (ii) the individual may be unaware of the consequences of making the disclosure;
- the authorised officer must:
- (c) inform the individual that the disclosure could be treated as an internal disclosure for the purposes of this Act; and
  - (d) explain what this Act requires in order for the disclosure to be an internal disclosure; and

- (da) advise the individual about the circumstances (if any) in which a public interest disclosure must be referred to an agency, or other person or body, under another law of the Commonwealth; and
- (e) advise the individual of any orders or directions of which the authorised officer is aware that are designated publication restrictions that may affect disclosure of the information.

*Duty to protect public officials against reprisals*

- (2) An authorised officer of an agency must take reasonable steps to protect public officials who belong to the agency against reprisals that have been, or may be, taken in relation to public interest disclosures that the authorised officer suspects on reasonable grounds:
  - (a) have been made or given to the officer; or
  - (b) may have been made or given to the officer; or
  - (c) are proposed to be made or given to the officer; or
  - (d) could be made or given to the officer.

## **60A Additional obligations of supervisors**

*Scope*

- (1) This section applies if:
  - (a) a public official (the *discloser*) discloses information to a supervisor of the official; and
  - (b) the supervisor has reasonable grounds to believe that the information concerns, or could concern, one or more instances of disclosable conduct; and
  - (c) the supervisor is not an authorised officer of the agency to which the supervisor belongs.

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*Obligation to explain matters to discloser*

- (2) The supervisor must:
- (a) inform the discloser that the disclosure could be treated as an internal disclosure for the purposes of this Act; and
  - (b) explain to the discloser the procedures under this Act for such a disclosure to be:
    - (i) given to an authorised officer; and
    - (ii) allocated to the discloser's agency or another agency; and
    - (iii) investigated by the principal officer of that agency; and
  - (c) advise the individual about the circumstances (if any) in which a public interest disclosure must be referred to an agency, or other person or body, under another law of the Commonwealth; and
  - (d) explain to the discloser the civil and criminal protections this Act provides to protect disclosers, and those providing assistance in relation to such disclosures, from reprisals.

*Obligation to give information to an authorised officer*

- (3) The supervisor must, as soon as reasonably practicable after the disclosure is made, give the information to an authorised officer of the agency.

**61 Additional obligations of public officials**

- (1) A public official must use his or her best endeavours to assist the principal officer of an agency in the conduct of an investigation under Division 2 of Part 3.
- (2) A public official must use his or her best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under this Act.
- (3) A public official must use his or her best endeavours to assist the IGIS in the performance of the IGIS's functions under this Act.

- (4) A public official must use the public official's best endeavours to assist any other public official to exercise a right, or perform a duty or function, under this Act.

## **62 Additional functions of the Ombudsman**

The functions of the Ombudsman include:

- (a) assisting:
- (i) principal officers of agencies (other than intelligence agencies or the IGIS); and
  - (ii) authorised officers of agencies (other than intelligence agencies or the IGIS); and
  - (iii) public officials who belong to agencies (other than intelligence agencies or the IGIS); and
  - (iv) former public officials who belonged to agencies (other than intelligence agencies or the IGIS);
- in relation to the operation of this Act; and
- (b) conducting educational and awareness programs relating to this Act, to the extent to which this Act relates to:
- (i) agencies (other than intelligence agencies or the IGIS); and
  - (ii) public officials who belong to agencies (other than intelligence agencies or the IGIS); and
  - (iii) former public officials who belonged to agencies (other than intelligence agencies or the IGIS); and
- (c) assisting the IGIS in relation to the performance of the functions conferred on the IGIS by this Act.

Note: Section 5A of the *Ombudsman Act 1976* extends the Ombudsman's functions to cover disclosures of information that have been, or are required to be, allocated under section 43 of this Act (whether or not they are allocated to the Ombudsman), if the disclosable conduct with which the information is concerned relates to an agency other than an intelligence agency or the IGIS.

### 63 Additional functions of the IGIS

The functions of the IGIS include:

- (a) assisting:
  - (i) principal officers of intelligence agencies; and
  - (ii) authorised officers of intelligence agencies or the IGIS; and
  - (iii) public officials who belong to intelligence agencies or the IGIS; and
  - (iv) former public officials who belonged to intelligence agencies or the IGIS;in relation to the operation of this Act; and
- (aa) assisting, in relation to the intelligence functions of ACIC or the Australian Federal Police:
  - (i) principal officers of that agency; and
  - (ii) authorised officers of that agency; and
  - (iii) public officials who belong to that agency; and
  - (iv) former public officials who belonged to that agency;in relation to the operation of this Act; and
- (b) conducting educational and awareness programs relating to this Act, to the extent to which this Act relates to:
  - (i) intelligence agencies; and
  - (ii) public officials who belong to intelligence agencies; and
  - (iii) former public officials who belonged to intelligence agencies; and
- (ba) conducting educational and awareness programs relating to this Act, in relation to the intelligence functions of ACIC or the Australian Federal Police, to the extent to which this Act relates to:
  - (i) that agency; and
  - (ii) public officials who belong to that agency; and
  - (iii) former public officials who belonged to that agency; and

- (c) assisting the Ombudsman in relation to the performance of the functions conferred on the Ombudsman by this Act.

Note: Section 8A of the *Inspector-General of Intelligence and Security Act 1986* extends the IGIS's functions to cover disclosures of information allocated under section 43 of this Act (whether or not they are allocated to the IGIS), if the disclosable conduct with which the information is concerned relates to:

- (a) an intelligence agency; or
- (b) ACIC or the Australian Federal Police, in relation to the intelligence functions of the agency.

## Division 2—Treatment of information

### 64 Simplified outline of this Division

This Division authorises the sharing of information about a disclosure between agencies, including between investigative agencies. It also provides an offence for the further disclosure, or use, of information that is the subject of a legal practitioner disclosure, except for the purposes of providing legal advice and professional assistance.

### 65 Sharing information and documents between agencies

#### *Scope*

- (1) This section applies to the provision of information and documents in relation to a disclosure that are relevant to the disclosure or the conduct disclosed, including (but not limited to) a copy of a report of an investigation into the disclosure under section 51.
- (2) To avoid doubt, this section does not limit the extent to which the provision of information or documents may be authorised or permitted under this or any other law.

#### *Authorised sharing*

- (3) The principal officer of an agency (the **sharing agency**) mentioned in column 1 of the following table is authorised to provide any such information and documents to the principal officer of an agency (the **destination agency**) mentioned in column 2 of the table, if the principal officer of the sharing agency considers the information or documents to be relevant to the destination agency's functions.

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<b>Item</b>	<b>Column 1 Sharing agency</b>	<b>Column 2 Destination agency</b>
1	An investigative agency, including the Ombudsman and the IGIS.	Any of the following: (a) another investigative agency; (b) the portfolio Department of the agency to which the conduct disclosed relates; (c) the agency to which the conduct disclosed relates.
2	If the disclosure is allocated within an agency's portfolio under subsection 43(8)—the agency to which the disclosure is allocated.	The agency to which the conduct disclosed relates.
3	If the disclosure is allocated within an agency's portfolio under subsection 43(8)—the agency to which the conduct disclosed relates.	The agency to which the disclosure is allocated.

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(4) The sharing agency may delete any material from the information to be provided if the sharing agency considers it appropriate to do so.

(5) Subsection (3) does not authorise the provision of the discloser's name and contact details if the discloser does not consent to the provision of those details.

## **67 Secrecy—legal practitioners**

- (1) A person commits an offence if:
- (a) the person has obtained information in the person's capacity as the recipient of a legal practitioner disclosure; and

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- (b) the person:
  - (i) discloses the information to another person; or
  - (ii) uses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) Subsection (1) does not apply if:
  - (a) the disclosure or use is for the purpose of providing legal advice, or professional assistance, relating to a public interest disclosure (other than a legal practitioner disclosure) made, or proposed to be made, by the person who made the legal practitioner disclosure referred to in paragraph (1)(a); or
  - (b) the information has previously been lawfully published.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

## Division 3—Officials and agencies

### 68 Simplified outline

The following is a simplified outline of this Division:

This Division defines the key concepts of public official, agency, prescribed authority and principal officer.

### Subdivision A—Public officials

#### 69 Public officials

- (1) For the purposes of this Act:
- (a) a **public official** means an individual mentioned in column 1 of an item of the following table; and
  - (b) the public official **belongs** to the agency mentioned in column 2 of the item.

<b>Public officials and the agencies to which they belong</b>		
<b>Item</b>	<b>Column 1 Public official</b>	<b>Column 2 Agency to which the public official belongs</b>
1	An APS employee in a Department.	The Department.
2	A member of staff of an agency other than a Department (including an APS employee in the agency).	The agency.
3	A Secretary of a Department.	The Department.
4	The principal officer of an agency other than a Department (see section 73).	The agency.
7	An individual who constitutes a prescribed authority.	The prescribed authority.
8	A member of a prescribed authority (other than a court).	The prescribed authority.

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<b>Public officials and the agencies to which they belong</b>		
<b>Item</b>	<b>Column 1 Public official</b>	<b>Column 2 Agency to which the public official belongs</b>
9	A director of a Commonwealth company.	The Commonwealth company.
10	A member of the Defence Force, or a cadet, officer or instructor in the Australian Defence Force Cadets.	The Defence Department.
11	An AFP appointee (within the meaning of the <i>Australian Federal Police Act 1979</i> ).	The Australian Federal Police.
12	A Parliamentary Service employee (within the meaning of the <i>Parliamentary Service Act 1999</i> ).	The Department in which the Parliamentary service employee is employed.
13	An individual who: (a) is employed by the Commonwealth otherwise than as an APS employee; and (b) performs duties for an agency.	The agency.
14	A statutory officeholder, other than an individual covered by any of the above items.	Whichever of the following agencies is applicable: (a) if the statutory officeholder is a deputy (however described) of the principal officer of an agency—that agency; (b) if the statutory officeholder performs the duties of his or her office as duties of his or her employment as an officer of or under an agency—that agency; (c) otherwise—the agency ascertained in accordance with the PID rules.

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**Public officials and the agencies to which they belong**

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<b>Item</b>	<b>Column 1 Public official</b>	<b>Column 2 Agency to which the public official belongs</b>
15	An individual who is a contracted service provider for a Commonwealth contract.	Whichever of the following agencies is applicable: (a) if the relevant services are to be, or were to be, provided wholly or principally for the benefit of an agency, or of a party to a contract with an agency—that agency; (b) otherwise—the agency ascertained in accordance with the PID rules.
16	An individual who: (a) is an officer or employee of a contracted service provider for a Commonwealth contract; and (b) provides services for the purposes (whether direct or indirect) of the Commonwealth contract.	Whichever of the following agencies is applicable: (a) if the relevant services are to be, or were to be, provided wholly or principally for the benefit of an agency, or of a party to a contract with an agency—that agency; (b) otherwise—the agency ascertained in accordance with the PID rules.

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<b>Public officials and the agencies to which they belong</b>		
<b>Item</b>	<b>Column 1 Public official</b>	<b>Column 2 Agency to which the public official belongs</b>
17	An individual (other than a statutory officeholder or an official of a registered industrial organisation) who exercises powers, or performs functions, conferred on the individual by or under a law of the Commonwealth, other than: (a) the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> ; or (b) the <i>Australian Capital Territory (Self-Government) Act 1988</i> ; or (c) the <i>Corporations Act 2001</i> ; or (e) the <i>Northern Territory (Self-Government) Act 1978</i> ; or (f) a provision prescribed by the PID rules.	The Department administered by the Minister administering that law.
17A	An individual who exercises powers, or performs functions, conferred on the individual under a law in force in Norfolk Island (whether the law is a law of the Commonwealth or a law of the Territory).	The Department administered by the Minister administering the <i>Norfolk Island Act 1979</i> .
18	An individual who exercises powers, or performs functions, conferred on the individual under a law in force in the Territory of Christmas Island (whether the law is a law of the Commonwealth or a law of the Territory).	The Department administered by the Minister administering the <i>Christmas Island Act 1958</i> .
19	An individual who exercises powers, or performs functions, conferred on the individual under a law in force in the Territory of Cocos (Keeling) Islands (whether the law is a law of the Commonwealth or a law of the Territory).	The Department administered by the Minister administering the <i>Cocos (Keeling) Islands Act 1955</i> .
20	The Registrar, or a Deputy Registrar, of Aboriginal and Torres Strait Islander	The Department administered by the Minister administering

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<b>Public officials and the agencies to which they belong</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Public official</b>	<b>Agency to which the public official belongs</b>
	Corporations.	the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> .

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Note: A public interest disclosure may be made by a person who is, or has been, a public official within the meaning of this Subdivision (see section 26).

- (2) A **statutory officeholder** means an individual (other than an official of a registered industrial organisation) who holds or performs the duties of an office established by or under a law of the Commonwealth, other than:
- (a) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or
  - (b) the *Australian Capital Territory (Self-Government) Act 1988*; or
  - (c) the *Corporations Act 2001*; or
  - (e) the *Northern Territory (Self-Government) Act 1978*.
- (3) For the purposes of item 2 of the table in subsection (1):
- (a) a person who is a member of the staff referred to in subsection 31(1) of the *Ombudsman Act 1976* is taken to be a member of the staff of the Ombudsman; and
  - (b) a person who is a member of the staff referred to in subsection 32(1) of the *Inspector-General of Intelligence and Security Act 1986* is taken to be a member of the staff of the IGIS; and
  - (c) a person (other than the National Anti-Corruption Commissioner) who is listed in section 266 of the *National Anti-Corruption Commission Act 2022* is taken to be a member of the staff of the National Anti-Corruption Commission.

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- (4) Despite subsections (1) and (2), the following are not **public officials**:
- (a) a judicial officer;
  - (b) a member of a Royal Commission;
  - (c) a member of Parliament;
  - (d) a person employed or engaged under the *Members of Parliament (Staff) Act 1984*.

**70 Individuals taken to be public officials**

- (1) If:
- (a) an authorised officer of an agency believes, on reasonable grounds, that an individual has information that concerns disclosable conduct; and
  - (b) apart from this subsection, the individual was not a public official when the individual obtained the information; and
  - (c) the individual has disclosed, or proposes to disclose, the information to the authorised officer;
- the authorised officer may, by written notice given to the individual, determine that this Act has effect, and is taken always to have had effect, in relation to the disclosure of the information by the individual, as if the individual had been a public official when the person obtained the information.
- (2) The authorised officer may make the determination:
- (a) on a request being made to the authorised officer by the individual; or
  - (b) on the authorised officer's own initiative.
- (3) If the individual requests an authorised officer of an agency to make the determination, the authorised officer must, after considering the request:
- (a) make the determination, and inform the individual accordingly; or
  - (b) refuse to make the determination, and inform the individual of the refusal and the reasons for the refusal.

- (3A) This section does not apply if the individual is:
- (a) a judicial officer; or
  - (b) a member of a Royal Commission; or
  - (c) a member of Parliament; or
  - (d) a person employed or engaged under the *Members of Parliament (Staff) Act 1984*.
- (4) A determination under this section is not a legislative instrument.

## **Subdivision B—Agencies and prescribed authorities**

### **71 Meaning of *agency***

- (1) ***Agency*** means:
- (a) a Commonwealth entity; or
  - (b) a prescribed authority.
- (2) However, a Royal Commission is not an agency.

### **72 Meaning of *prescribed authority***

- (1) ***Prescribed authority*** means one of following entities:
- (a) a Commonwealth company;
  - (b) the part of the Defence Department known as the Australian Geospatial-Intelligence Organisation;
  - (c) the part of the Defence Department known as the Defence Intelligence Organisation;
  - (d) the High Court or any court created by the Parliament;
  - (e) a body that is:
    - (i) established by a law of the Commonwealth; and
    - (ii) prescribed by the PID rules;
  - (f) the person holding, or performing the duties of, an office that is:
    - (i) established by a law of the Commonwealth; and
    - (ii) prescribed by the PID rules.

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- (2) The entities mentioned in paragraphs (b) and (c) of the definition of *prescribed authority* in subsection (1) are prescribed authorities in their own right, and not in their capacities as part of the Defence Department.

### Subdivision C—Principal officers

#### 73 Meaning of *principal officer*

- (1) For the purposes of this Act, the *principal officer* of an agency mentioned in column 1 of an item in the following table is the person specified in column 2 of the item.

Principal officers of agencies		
Item	Column 1 Agency	Column 2 Principal officer
1	A Department.	The Secretary of the Department.
4	The Australian Federal Police.	The Commissioner of Police (within the meaning of the <i>Australian Federal Police Act 1979</i> ).
5	The High Court or any court created by the Parliament.	The chief executive officer of the court.
6	The Office of Official Secretary to the Governor-General	The Official Secretary to the Governor-General.
7	The Ombudsman.	The Ombudsman.
8	The IGIS.	The IGIS.
9	A prescribed authority that is constituted by an individual.	The individual.
10	Any other agency.	Whichever of the following individuals is applicable: (a) the chief executive officer, or the head, however described, of the agency; (b) if another individual is ascertained in accordance with the PID rules—that other individual.

- (2) For the purposes of this Act:
- (a) the Chief Executive and Principal Registrar of the High Court is the *chief executive officer* of the High Court; and
  - (b) the Chief Executive Officer and Principal Registrar of the Federal Court is the *chief executive officer* of the Federal Court; and
  - (c) the Chief Executive Officer and Principal Registrar of the Federal Circuit and Family Court of Australia is the *chief executive officer* of the following courts:
    - (i) the Federal Circuit and Family Court of Australia (Division 1);
    - (ii) the Federal Circuit and Family Court of Australia (Division 2); and
  - (d) the PID rules may provide that the *chief executive officer* of another specified court is the person holding, or performing the duties of, a specified office; and
  - (e) the Registrar of the Administrative Appeals Tribunal is the *chief executive officer* of the Administrative Appeals Tribunal; and
  - (f) the PID rules may provide that the *chief executive officer* of another specified Commonwealth tribunal is the person holding, or performing the duties of, a specified office.

## **Subdivision D—Machinery of government changes**

### **73A Scope of Subdivision**

This Subdivision applies if:

- (a) either of the following (a *machinery of government change*) occurs in relation to an agency (the *affected agency*) at a particular time (the *change time*):
  - (i) the affected agency is abolished;
  - (ii) there is a change to the matters dealt with by the affected agency; and

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- (b) as a result of the machinery of government change, a function (a *transferred function*) of the affected agency is transferred to another agency (the *new agency*).

**73B Machinery of government changes—conduct relating to affected agency**

Despite section 35 (which defines when conduct relates to an agency), conduct that occurred before the change time and that would, apart from this section, relate to the affected agency is instead taken, for the purposes of this Act, to relate to the new agency if:

- (a) the conduct relates to a transferred function; or
- (b) the PID rules provide that conduct of that kind is to be taken to relate to the new agency.

**73C Machinery of government changes—disclosures made before change**

- (1) This section applies if:
  - (a) before the change time, a person disclosed information to an authorised officer of an affected agency, or to a supervisor belonging to the affected agency; and
  - (b) the information concerns conduct that is taken to relate to the new agency under section 73B; and
  - (c) immediately before the change time, consideration of the disclosure under this Act had not started, or (if it had started) had not ended.
- (2) For the purposes of this Act:
  - (a) the disclosure is taken to have been made to an authorised officer of the new agency, or to a supervisor belonging to the new agency; and
  - (b) if the disclosure had, before the change time, been allocated to the affected agency, after that time it is taken to have been allocated to the new agency; and

- (c) if an investigation under this Act had, before the change time, started in relation to the disclosure, the investigation may continue as if the disclosure had been made in relation to conduct that relates to the new agency; and
- (d) anything done (including any decision made) for the purposes of this Act in relation to the disclosure before the change time by any person is taken, for the purposes of the application of this Act, to have been done after the change time; and
- (e) after the change time, this Act continues to apply in relation to the disclosure accordingly.

### **73D Machinery of government changes—information transfer**

- (1) This section applies if:
  - (a) before the change time, a person disclosed information to an authorised officer of an affected agency, or to a supervisor belonging to the affected agency; and
  - (b) the information concerns conduct that is taken to relate to the new agency under section 73B; and
  - (c) either:
    - (i) immediately before the change time, consideration of the disclosure under this Act had not started, or (if it had started) had not ended; or
    - (ii) before or after the change time, a report into an investigation under section 51 in relation to the disclosure is completed by the principal officer of the affected agency.
- (2) The principal officer of the affected agency is authorised to provide the following information (including documents) in relation to the disclosure to the principal officer of the new agency:
  - (a) any report of the investigation under section 51;
  - (b) any notice of recommendations by the Ombudsman or the IGIS under section 55;
  - (c) any other information in relation to the disclosure.

## Part 5—Miscellaneous

### 74 Ombudsman may determine standards

- (1) The Ombudsman may, by legislative instrument, determine standards relating to the following:
  - (a) procedures, to be complied with by the principal officers of agencies, for dealing with internal disclosures and possible internal disclosures;
  - (b) the conduct of investigations under this Act;
  - (c) the preparation, under section 51, of reports of investigations under this Act;
  - (d) the giving of information and assistance under subsection 76(3), and the keeping of records for the purposes of that subsection.
- (2) Before determining a standard, the Ombudsman must consult the IGIS.
- (3) The Ombudsman must ensure that standards are in force under each of paragraphs (1)(a), (b) and (c) at all times after the commencement of this section.

### 75 Restriction on the application of secrecy provisions

- (1) A provision of a law of the Commonwealth that prohibits the disclosure, recording or use of information does not apply to the disclosure, recording or use of information if:
  - (a) the disclosure, recording or use is in connection with the conduct of a disclosure investigation; or
  - (b) the disclosure, recording or use is for the purposes of the performance of the functions, or the exercise of the powers, conferred on a person by Part 3 or section 61 or 65; or
  - (c) the disclosure, recording or use is in connection with giving a person access to information for the purposes of, or in

connection with, the performance of the functions, or the exercise of the powers, conferred on the person by Part 3 or section 61 or 65;

and the disclosure, recording or use is not contrary to a designated publication restriction.

Note: For *designated publication restriction*, see section 8.

- (2) However, this section does not apply if:
- (a) the provision is enacted after the commencement of this section; and
  - (b) the provision is expressed to have effect despite this section.

## **76 Annual reports by the Ombudsman**

- (1) The Ombudsman must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to Parliament, a report on the operation of this Act during that financial year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) The report must include:
- (a) in relation to each agency, statements of the following:
    - (i) the number of public interest disclosures received by authorised officers of the agency during the financial year;
    - (ii) the kinds of disclosable conduct to which those disclosures relate;
  - (ia) the number of disclosures allocated to the agency during the financial year;
  - (iii) the number of disclosure investigations that the principal officer of the agency conducted during the financial year;
  - (iia) the time taken to conduct those disclosure investigations;
  - (iv) the actions that the principal officer of the agency has taken during the financial year in response to

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recommendations in reports relating to those disclosure investigations; and

- (b) a statement of the number and nature of the complaints made to the Ombudsman during the financial year about the conduct of agencies in relation to public interest disclosures; and
- (c) information about the Ombudsman's performance of its functions under section 62; and
- (d) information about the IGIS's performance of its functions under section 63; and
- (e) the information covered by paragraphs (a) to (d) as it relates to each of the following periods:
  - (i) the period from 1 July to 31 December in the financial year, as reported under section 76A, with any updates or necessary corrections or revisions indicated;
  - (ii) the period from 1 January to 30 June in the financial year.

Note: The IGIS's annual report is also required to include information about public interest disclosures received by the IGIS: see section 35 of the *Inspector-General of Intelligence and Security Act 1986*.

- (3) The principal officer of an agency must give the Ombudsman such information and assistance as the Ombudsman reasonably requires in relation to the preparation of a report under this section.
- (4) Despite subsection (3), the principal officer may delete from a document given to the Ombudsman under that section any material:
  - (a) that is likely to enable the identification of a person who has made a public interest disclosure or another person; or
  - (b) the inclusion of which would:
    - (i) result in the document being a document that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982*; or
    - (ii) result in the document being a document having, or being required to have, a national security or other protective security classification.

- (5) A report under this section in relation to a period may be included in an annual report prepared by the Ombudsman and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for the period.

### **76A Six-monthly reports by the Ombudsman**

*Report on period 1 July to 31 December each year*

- (1) The Ombudsman must, as soon as practicable after the end of each calendar year, prepare and give to the Minister, for presentation to Parliament, a report on the operation of this Act during the period from 1 July to 31 December in the calendar year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about periodic reports.

- (2) The report must include the information covered by paragraphs 76(2)(a) to (d) (which deal with annual reports) in relation to the period from 1 July to 31 December in the calendar year.

- (3) Subsections 76(3) and (4) apply in relation to a report under this section in the same way as they apply in relation to a report under section 76.

Note: Subsections 76(3) and (4) relate to the powers of the Ombudsman and principal officers of agencies in relation to the preparation of annual reports.

### **77 Delegations**

- (1) The principal officer of an agency may, by writing, delegate any or all of the principal officer's functions or powers under this Act to a public official who belongs to the agency.

Example: The Ombudsman and the IGIS are the principal officers of their respective agencies. Under this subsection, the Ombudsman, or the IGIS, may delegate any of their respective functions or powers to a public official who belongs to the relevant agency (see section 69).

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- (2) A person exercising functions or powers under a delegation under this section must comply with any directions of the principal officer who delegated the function or power.

**78 Liability for acts and omissions**

- (1) A person who is:
- (a) the principal officer of an agency or a delegate of the principal officer; or
  - (b) an authorised officer of an agency; or
  - (c) a supervisor of a person who makes a disclosure; or
  - (ca) a person assisting:
    - (i) a principal officer of an agency; or
    - (ii) a delegate of the principal officer;
- is not liable to any criminal or civil proceedings, or any disciplinary action (including any action that involves imposing any detriment), for or in relation to an act or matter done, or omitted to be done, in good faith:
- (d) in the performance, or purported performance, of any function conferred on the person by this Act; or
  - (e) in the exercise, or purported exercise, of any power conferred on the person by this Act; or
  - (f) in the case of a person assisting a principal officer or delegate, as mentioned in paragraph (ca)—in assisting the principal officer or delegate in doing anything mentioned in paragraph (d) or (e).
- (2) This section does not apply to a breach of a designated publication restriction.
- Note: For *designated publication restriction*, see section 8.
- (3) This section does not affect any rights conferred by the *Administrative Decisions (Judicial Review) Act 1977* to apply to a court, or any other rights to seek a review by a court or tribunal, in relation to:
- (a) a decision; or
  - (b) conduct engaged in for the purpose of making a decision; or
-

(c) a failure to make a decision.

- (4) An expression used in subsection (3) has the same meaning as in section 10 of the *Administrative Decisions (Judicial Review) Act 1977*.

### **79 Concurrent operation of State and Territory laws**

This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.

### **80 Law relating to legal professional privilege not affected**

This Act does not affect the law relating to legal professional privilege.

### **82 Other investigative powers etc. not affected**

- (1) This Act does not, by implication, limit the investigative powers conferred on an agency or a public official by a law of the Commonwealth other than this Act.
- (2) This Act does not detract from any obligations imposed on an agency or a public official by a law of the Commonwealth other than this Act.

### **82A Review of operation of Act**

- (1) The Minister must cause a review to be undertaken of the operation of this Act.
- (2) The review must be conducted as soon as practicable after the end of 5 years after this section commences.
- (3) The Minister must cause a written report about the review to be prepared.

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- (4) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

**83 The PID rules**

The Minister may, by legislative instrument, make rules prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

## Endnotes

### Endnote 1—About the endnotes

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Public Interest Disclosure Act 2013	133, 2013	15 July 2013	s 3–83: 15 Jan 2014 (s 2(1) item 2) Remainder: 15 July 2013 (s 2(1) item 1)	
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 11 (items 84–91) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 11 (item 87) and Sch 14
<b>as amended by</b>				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
<b>as amended by</b>				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
National Security Legislation Amendment Act (No. 1) 2014	108, 2014	2 Oct 2014	Sch 1 (items 49–53, 85): 30 Oct 2014 (s 2(1) item 2) Sch 7 (items 138–145): 3 Oct 2014 (s 2(1) item 5)	Sch 1 (item 85) and Sch 7 (items 144, 145)
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 1 (items 178–180): 18 June 2015 (s 2(1) item 2) Sch 1 (items 184–203): 27 May 2015 (s 2(1) item 3)	Sch 1 (items 184–203)
Tribunals Amalgamation Act 2015	60, 2015	26 May 2015	Sch 8 (item 38) and Sch 9: 1 July 2015 (s 2(1) items 19, 22)	Sch 9
Law Enforcement Legislation Amendment (Powers) Act 2015	109, 2015	30 June 2015	Sch 1 (items 63, 64): 28 July 2015 (s 2(1) item 2)	Sch 1 (item 64)
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 496): 5 Mar 2016 (s 2(1) item 2)	—
Civil Law and Justice (Omnibus Amendments) Act 2015	132, 2015	13 Oct 2015	Sch 1 (item 68): 14 Oct 2015 (s 2(1) item 2)	—
Defence Legislation Amendment (First Principles) Act 2015	164, 2015	2 Dec 2015	Sch 2 (items 70, 80): 1 July 2016 (s 2(1) item 2)	Sch 2 (item 80)

## Endnotes

### Endnote 3—Legislation history

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Courts Administration Legislation Amendment Act 2016	24, 2016	18 Mar 2016	Sch 5 (items 29, 30): 1 July 2016 (s 2(1) item 7) Sch 5 (item 33): 1 Jan 2018 (s 2(1) item 8) Sch 6: 18 Mar 2016 (s 2(1) item 9)	Sch 6
Counter-Terrorism Legislation Amendment Act (No. 1) 2016	82, 2016	29 Nov 2016	Sch 15 (item 33): 30 Nov 2016 (s 2(1) item 3)	—
Office of National Intelligence (Consequential and Transitional Provisions) Act 2018	156, 2018	10 Dec 2018	Sch 2 (items 89, 90) and Sch 4: 20 Dec 2018 (s 2(1) items 2, 4)	Sch 4
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (items 710–714): 1 Sept 2021 (s 2(1) item 5)	—
Surveillance Legislation Amendment (Identify and Disrupt) Act 2021	98, 2021	3 Sept 2021	Sch 2 (items 96–111): 4 Sept 2021 (s 2(1) item 3)	Sch 2 (item 111)

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022	89, 2022	12 Dec 2022	Sch 1 (items 163, 171–174, 182): repealed before commencing (s 2(1) item 2) Sch 1: (items 164–170, 175–181, 183): 1 July 2023 (s 2(1) item 2)	—
<b>as amended by</b>				
Public Interest Disclosure Amendment (Review) Act 2023	23, 2023	19 June 2023	Sch 4 (item 1): 1 July 2023 (s 2(1) item 3)	—
Public Interest Disclosure Amendment (Review) Act 2023	23, 2023	19 June 2023	Sch 1–3 and Sch 4 (items 6–25): 1 July 2023 (s 2(1) items 2, 6) Sch 4 (item 2): never commenced (s 2(1) item 4)	Sch 3
National Security Legislation Amendment (Comprehensive Review and Other Measures No. 2) Act 2023	53, 2023	11 Aug 2023	Sch 1 (item 16): 12 Aug 2023 (s 2(1) item 1)	—

## Endnotes

### Endnote 4—Amendment history

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#### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
<b>Division 2</b>	
s 6 .....	am No 23, 2023
<b>Division 3</b>	
s 7 .....	rs No 23, 2023
	am No 23, 2023
s 7A .....	ad No 23, 2023
s 7B.....	ad No 23, 2023
<b>Division 4</b>	
s 8 .....	am No 62, 2014; No 108, 2014; No 60, 2015; No 109, 2015; No 164, 2015; No 82, 2016
	ed C10
	am No 156, 2018; No 13, 2021; No 98, 2021; No 89, 2022; No 23, 2023
<b>Part 2</b>	
Part 2 heading .....	rs No 23, 2023
<b>Division 1</b>	
s 9 .....	am No 13, 2021; No 23, 2023
<b>Subdivision A</b>	
s 12A .....	ad No 23, 2023
s 12B.....	ad No 23, 2023
<b>Subdivision B</b>	
s 13 .....	am No 23, 2023
s 14 .....	am No 13, 2021; No 23, 2023
s 15 .....	am No 13, 2021; No 23, 2023
s 16 .....	am No 13, 2021
s 17 .....	am No 13, 2021
s 19 .....	rs No 23, 2023
s 19A .....	am No 23, 2023

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision C</b>	
s 20 .....	am No 23, 2023
<b>Subdivision D</b>	
s 22 .....	am No 23, 2023
s 22A .....	am No 13, 2021
<b>Subdivision E</b>	
s 23 .....	am No 132, 2015
<b>Division 2</b>	
s 25 .....	am No 89, 2022; No 23, 2023
<b>Subdivision A</b>	
s 26 .....	am No 89, 2022; No 23, 2023
s 28 .....	am No 89, 2022
<b>Subdivision B</b>	
s 29 .....	am No 62, 2014; No 23, 2023
s 29A .....	ad No 23, 2023
s 30 .....	am No 23, 2023
s 32 .....	am No 126, 2015
<b>Subdivision C</b>	
s 34 .....	am No 98, 2021; No 23, 2023
s 35 .....	am No 23, 2023
<b>Subdivision D</b>	
s 41 .....	am No 108, 2014
<b>Part 3</b>	
<b>Division 1</b>	
s 42 .....	am No 98, 2021; No 89, 2022
s 43 .....	am No 98, 2021
	rs No 23, 2023
	am No 23, 2023
	ed C15
s 44 .....	am No 98, 2021
	rs No 23, 2023

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 44A .....	ad No 23, 2023
s 44B.....	ad No 23, 2023
s 45 .....	am No 23, 2023
s 45A .....	ad No 23, 2023
<b>Division 2</b>	
s 46 .....	am No 98, 2021; No 89, 2022
s 47 .....	am No 89, 2022; No 23, 2023
s 48 .....	am No 23, 2023
s 49 .....	am No 23, 2023
s 50 .....	am No 89, 2022; No 23, 2023
s 50AA.....	ad No 23, 2023
s 50A .....	am No 98, 2021; No 89, 2022; No 23, 2023
s 51 .....	am No 23, 2023
s 52 .....	am No 98, 2021; No 23, 2023
s 53 .....	am No 62, 2014; No 23, 2023
s 54 .....	rs No 23, 2023
<b>Division 3</b>	
s 55 .....	ad No 23, 2023
s 56 .....	rs No 23, 2023 am No 23, 2023
s 57 .....	rep No 23, 2023
<b>Part 4</b>	
<b>Division 1</b>	
s 58 .....	am No 98, 2021
s 59 .....	rs No 23, 2023
s 60 .....	am No 23, 2023
s 60A .....	rs No 23, 2023
s 61 .....	am No 23, 2023
s 63 .....	am No 98, 2021
<b>Division 2</b>	
s 64 .....	rs No 23, 2023

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 65 .....	rs No 23, 2023
s 66 .....	am No 108, 2014 rep No 23, 2023
s 67 .....	am No 23, 2023
<b>Division 3</b>	
<b>Subdivision A</b>	
s 69 .....	am No 59, 2015; No 89, 2022; No 23, 2023
s 70 .....	am No 23, 2023
<b>Subdivision B</b>	
s 71 .....	rs No 23, 2023
s 72 .....	am No 62, 2014; No 108, 2014; No 156, 2018 rs No 23, 2023
<b>Subdivision C</b>	
s 73 .....	am No 24, 2016; No 13, 2021; No 23, 2023
<b>Subdivision D</b>	
Subdivision D .....	ad No 23, 2023
s 73A .....	ad No 23, 2023
s 73B .....	ad No 23, 2023
s 73C .....	ad No 23, 2023
s 73D .....	ad No 23, 2023
<b>Part 5</b>	
s 75 .....	am No 23, 2023
s 76 .....	am No 62, 2014; No 23, 2023; No 53, 2023
s 76A .....	ad No 23, 2023
s 77 .....	rs No 23, 2023
s 78 .....	am No 23, 2023
s 82A .....	rs No 23, 2023