



# Public Interest Disclosure Standard 2013

as amended

made under section 74 of the

*Public Interest Disclosure Act 2013*

**Compilation start date:** 11 July 2014

**Includes amendments up to:** Public Interest Disclosure Amendment (Conduct of Investigations) Standard 2014

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Public Interest Disclosure Standard 2013* as in force on 11 July 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 11 July 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### **Uncommenced amendments**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

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

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

### **Modifications**

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### **Provisions ceasing to have effect**

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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# Contents

<b>Part 1—Introduction</b>	1
1    Name of standard .....	1
3    Authority .....	1
4    Definitions .....	1
<b>Part 2—Procedures Relating to Disclosures</b>	2
5    Contact details of authorised officers .....	2
6    Record of allocating the handling of a disclosure .....	2
7    Support for public officials .....	2
<b>Part 3—Conduct of investigations</b>	3
8    Application of Part .....	3
9    Initial information for disclosers .....	3
10   Conducting an interview .....	3
11   Standard of proof .....	4
12   Evidence .....	4
<b>Part 4—Reports of Investigations</b>	5
13   Report of investigation .....	5
<b>Part 5—Giving of information and assistance to the Ombudsman</b>	6
14   Application of Part .....	6
15   Information and assistance required by the Ombudsman .....	6
<b>Part 6—Transitional provisions</b>	7
16   Application of amendments made by the <i>Public Interest Disclosure Amendment (Conduct of Investigations) Standard 2014</i> .....	7
<b>Endnotes</b>	8
<b>Endnote 1—About the endnotes</b>	8
<b>Endnote 2—Abbreviation key</b>	9
<b>Endnote 3—Legislation history</b>	10
<b>Endnote 4—Amendment history</b>	11
<b>Endnote 5—Uncommenced amendments [none]</b>	12
<b>Endnote 6—Modifications [none]</b>	12
<b>Endnote 7—Misdescribed amendments [none]</b>	12
<b>Endnote 8—Miscellaneous [none]</b>	12



## Part 1—Introduction

### 1 Name of standard

This standard is the *Public Interest Disclosure Standard 2013*.

### 3 Authority

This standard is made under subsection 74(1) of the *Public Interest Disclosure Act 2013*.

### 4 Definitions

Note: Words and expressions that are used in the Act have the same meaning in this standard unless the contrary intention appears. Some terms that are defined in the Act and are particularly important in this standard have been identified or reproduced below, and are indicated with an asterisk.

In this standard:

*Act* means the *Public Interest Disclosure Act 2013*.

\**disclosure investigation* means:

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

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

Section 5

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## Part 2—Procedures Relating to Disclosures

Note: See paragraph 74(1)(a) of the Act.

### 5 Contact details of authorised officers

The principal officer of an agency must ensure that the agency provides an effective means for potential disclosers to find out how to contact authorised officers.

Note: An agency could do this by providing a link on its public website to a list of its authorised officers, with contact details including email and postal addresses, and possibly phone numbers. Agencies with security responsibilities might not be able to provide the names of the authorised officers on a public website, but would still be able to provide a means for contacting them.

### 6 Record of allocating the handling of a disclosure

- (1) The procedures established by a principal officer under subsection 59(1) of the Act must require that, when an authorised officer of the agency allocates the handling of a disclosure to one or more agencies, an appropriate written record is kept of:
  - (a) the decision (including the name of each agency to which the disclosure is to be allocated); and
  - (b) the reasons for the decision; and
  - (c) the consent provided by the agency to which the allocation is made.
- (2) The procedures must also require that:
  - (a) the authorised officer informs a discloser of the matters mentioned in section 44 of the Act as soon as reasonably practicable; and
  - (b) appropriate records are kept of whether the discloser was informed of the decision and, if so, of:
    - (i) the day and time the discloser was notified; and
    - (ii) the means by which the discloser was notified; and
    - (iii) the content of the notification.

### 7 Support for public officials

The procedures established by a principal officer under subsection 59(1) of the Act must outline any support that will be made available to public officials who make disclosures relating to the agency.

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## Part 3—Conduct of investigations

Note: See paragraph 74(1)(b) of the Act.

### 8 Application of Part

- (1) This Part applies to a principal officer of an agency who is conducting an investigation of a disclosure under the Act.
- (2) Despite subsection (1), if a principal officer is required, when investigating a disclosure, to act in accordance with any rules relating to fraud that are made for the purposes of the *Public Governance, Performance and Accountability Act 2013*, this standard will apply only to the extent that it is not inconsistent with those rules.

Note 1: Subsection 53(4) of the Act requires a principal officer to 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 an investigation of a disclosure relates to one or more instances of fraud.

Note 2: This standard does not apply where an agency that is an *investigative agency* for the purposes of the Act uses a *separate investigative power* as defined at section 49(2) of the Act.

Note 3: The principal officer must comply with this standard and all other applicable standards determined by the Ombudsman: see subsection 53(3) of the Act.

### 9 Initial information for disclosers

- (1) The principal officer must ensure that a discloser is given information about the principal officer's powers to:
  - (a) decide not to investigate the disclosure; or
  - (b) decide not to investigate the disclosure further; or
  - (c) decide to investigate the disclosure under a separate investigative power.
- (2) The principal officer must ensure that, where it is reasonably practicable to do so, the discloser is given the information within 14 days after the disclosure is allocated to the agency.

### 10 Conducting an interview

- (1) Subject to restrictions imposed by any other law of the Commonwealth, the principal officer must ensure that, if a person is interviewed as part of the investigation of a disclosure, the interviewee is informed of the following:
  - (a) the identity and function of each individual conducting the interview;
  - (b) the process of conducting an investigation;
  - (c) the authority of the principal officer under the Act to conduct the investigation;
  - (d) the protections provided by section 57 of the Act.
- (2) The principal officer must ensure that:
  - (a) an audio or visual recording of the interview is not made without the interviewee's knowledge; and

## Section 11

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- (b) when an interview ends, the interviewee is given an opportunity to make a final statement or comment, or express a position; and
- (c) any final statement, comment or position by the interviewee is included in the record of the interview.

### 11 Standard of proof

The principal officer must ensure that a disclosure is investigated on the basis that a decision whether evidence is sufficient to prove a fact must be determined on the balance of probabilities.

Note: This is the standard applied in civil proceedings. Summarised broadly, a fact is taken to have been proved on the balance of probabilities if the principal officer is satisfied it is more likely than not that the fact is true.

### 12 Evidence

- (1) The principal officer must ensure that a finding of fact is based on logically probative evidence.

Note: Summarised broadly, this is material that tends logically to prove the existence or non-existence of a fact.

- (2) The principal officer must also ensure that the evidence relied on in an investigation is relevant.

Note: Summarised broadly, this is evidence that:

- (a) is of consequence to a matter under investigation; and
- (b) makes the existence of a fact more probable or less probable than it would be without the evidence.



## **Part 4—Reports of Investigations**

Note: See paragraph 74(1)(c) of the Act.

### **13 Report of investigation**

A report under section 51 of the Act must, where relevant:

- (a) identify whether there have been one or more instances of disclosable conduct; and
- (b) identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates; and
- (c) explain the steps taken to gather evidence; and
- (d) set out a summary of the evidence, as well as any findings and recommendations made based on that evidence.

Section 14

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## **Part 5—Giving of information and assistance to the Ombudsman**

Note: See paragraph 74(1)(d) of the Act.

### **14 Application of Part**

This Part applies to the principal officer of an agency in relation to the preparation, under section 76 of the Act, of an annual report by the Ombudsman.

### **15 Information and assistance required by the Ombudsman**

- (1) The principal officer of an agency must provide the following information for the purpose of preparing the Ombudsman's annual report under the Act:
  - (a) the number of public interest disclosures received by authorised officers of the agency during the relevant financial year;
  - (b) the kinds of disclosable conduct to which those public interest disclosures related;
  - (c) the number of disclosure investigations that the principal officer of the agency conducted during the relevant financial year;
  - (d) the actions that the principal officer has taken during the relevant financial year in response to recommendations in reports relating to those disclosure investigations;
  - (e) any other information requested by the Ombudsman.
- (2) The principal officer must provide the information within a time requested by the Ombudsman or as otherwise agreed with the Ombudsman.

Note: In the case of an agency for which the IGIS is responsible, the Ombudsman would make any request through the IGIS.

## **Part 6—Transitional provisions**

### **16 Application of amendments made by the *Public Interest Disclosure Amendment (Conduct of Investigations) Standard 2014***

Despite the amendments made by Schedule 1 to the *Public Interest Disclosure Amendment (Conduct of Investigations) Standard 2014* (the **amendment standard**), section 8 of this standard, as in force immediately before 1 July 2014, continues to apply in relation to an investigation that was not completed before that date.

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

Endnote 1—About the endnotes  
Endnote 2—Abbreviation key  
Endnote 3—Legislation history  
Endnote 4—Amendment history  
Endnote 5—Uncommenced amendments  
Endnote 6—Modifications  
Endnote 7—Misdescribed amendments  
Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

### Abbreviation key—Endnote 2

The abbreviation key in this endnote 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 the compiled law. The information includes commencement information for amending laws and details of 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 level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

### Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

### Modifications—Endnote 6

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

### Misdescribed amendments—Endnote 7

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

### Miscellaneous—Endnote 8

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

## Endnotes

### Endnote 3—Legislation history

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#### Endnote 3—Legislation history

Name	FRLI registration	Commencement	Application, saving and transitional provisions
Public Interest Disclosure Standard 2013	18 Dec 2013 ( <i>see</i> F2013L02146)	15 Jan 2014	
Public Interest Disclosure Amendment (Conduct of Investigations) Standard 2014	10 July 2014 ( <i>see</i> F2014L00978)	11 July 2014	—

## 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>Pt 1</b>	
s 2 .....	rep LIA s 48D
<b>Pt 3</b>	
s 8 .....	am F2014L00978
Note 1 to s 8(2) .....	rs F2014L00978
<b>Pt 6</b>	
Pt 6 .....	ad F2014L00978
s 16 .....	ad F2014L00978

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## Endnotes

Endnote 5—Uncommenced amendments [none]

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**Endnote 5—Uncommenced amendments [none]**

**Endnote 6—Modifications [none]**

**Endnote 7—Misdescribed amendments [none]**

**Endnote 8—Miscellaneous [none]**