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1 Name

This instrument is the *Public Interest Disclosure Amendment (Review) Standard 2023*.

2 Commencement

- (1) Each provision of this instrument 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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the start of the day after this instrument is registered; and (b) immediately after the commencement of Schedule 4 to the <i>Public Interest Disclosure Amendment (Review) Act 2023</i> .	1 July 2023 (paragraph (b) applies)

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Public Interest Disclosure Standard 2013

1 Section 1 (heading)

Omit “of standard”.

2 Section 1

Omit “This standard”, substitute “This instrument”.

3 Section 3

Omit “standard”, substitute “instrument”.

4 Section 4 (note)

Repeal the note, substitute:

- Note: A number of expressions used in this instrument are defined in the Act, including the following:
- (a) another law or power;
 - (b) disclosure investigation;
 - (c) IGIS (short for Inspector-General of Intelligence and Security);
 - (d) investigative agency;
 - (e) stop action direction under the NACC Act (NACC is short for *National Anti-Corruption Commission Act 2022*);
 - (f) separate investigative power.

5 Section 4

Omit “standard” (first occurring), substitute “instrument”.

6 Section 4 (definitions of *disclosure investigation* and *IGIS*)

Repeal the definitions.

7 Section 5 (note)

Repeal the note, substitute:

- Note 1: The means for contacting authorised officers of the agency should be effective for enabling both current and former officials of the agency to find out how to contact authorised officers of the agency.
- Note 2: For further guidance about implementing the requirement in this section, see the Office of the Commonwealth Ombudsman’s *Agency Guide to the Public Interest Disclosure Act 2013*. In 2023, the latest edition of the Agency Guide could be accessed at www.ombudsman.gov.au.

8 Section 6

Repeal the section, substitute:

6 Records of allocation and non-allocation of disclosures

The procedures established by a principal officer of an agency under subsection 59(3) of the Act must require that when a decision is made, or a circumstance arises, that is mentioned in column 1 of the following table, an appropriate written record is kept of the matters mentioned in column 2 of the table.

Records of allocation and non-allocation of disclosures		
Item	Column 1 Decision or circumstance	Column 2 Matters to be recorded
1	A decision to allocate a disclosure to one or more agencies (including a decision to reallocate the disclosure under section 45 of the Act)	All of the following that are appropriate: <ul style="list-style-type: none"> (a) the decision (including the name of each agency to which the disclosure is to be allocated); (b) the reasons for the decision; (c) in a case in which the authorised officer belongs to an investigative agency—the consultation for the purposes of paragraph 43(9)(a) of the Act with an authorised officer in the agency to which the disclosure is allocated; (d) in a case in which the authorised officer does not belong to an investigative agency—the consent given for the purposes of paragraph 43(9)(b) of the Act by an authorised officer in the agency to which the disclosure is allocated
2	A decision not to allocate a disclosure to any agency	Both of the following: <ul style="list-style-type: none"> (a) the decision; (b) the reasons for the decision
3	A stop action direction under the NACC Act is made that prevents the allocation of a disclosure to any agency	Details of the direction, including when the direction was made and when the stop action direction no longer applies

Note 1: This table relates to the reallocation of disclosures under section 45 of the Act in the same way as it applies to the allocation of disclosures under section 43 of the Act (see paragraph 43(2)(b) and subsection 45(2) of the Act).

Note 2: For stop action directions under the NACC Act, see subsection 43(12) of the Act.

6A Records of notice of allocation decisions

Notices to which this section applies

- (1) This section applies if any of the following notices relating to the allocation of a disclosure are given in relation to an agency (the **relevant agency**):
 - (a) a notice by an authorised officer of the relevant agency under section 44 of the Act of a decision to allocate a disclosure to one or more agencies;
 - (b) a notice by an authorised officer of the relevant agency under section 44A of the Act of a decision not to allocate a disclosure to any agency;
 - (c) a notice under section 44B of the Act of a stop action direction under the NACC Act preventing an authorised officer of the relevant agency from allocating some or all of a disclosure under section 43 of the Act.

Records to be kept

- (2) The procedures established by the principal officer of the relevant agency under subsection 59(3) of the Act must require that an appropriate written record is kept of the following matters:

- (a) whether the notice (or a copy of the notice) was given to the discloser, and if not, why not;
- (b) if the notice (or a copy of the notice) was given to the discloser, the following matters:
 - (i) the day and time the notice (or copy) was given to the discloser;
 - (ii) the means by which the notice (or copy) was given to the discloser;
 - (iii) the matters included in the notice.
- (3) In the case of a notice of a stop-action direction, the written record must also indicate whether the principal officer of the relevant agency considers that it is reasonably practicable or appropriate for the discloser to be given a copy of the notice.

9 Section 7

Omit “59(1)”, substitute “59(3)”.

10 Part 3 (heading)

Omit “**investigations**”, substitute “**disclosure investigations under Division 2 of Part 3 of the Act**”.

11 Subsection 8(1)

Omit “an investigation of a disclosure under the Act”, substitute “a disclosure investigation under Division 2 of Part 3 of the Act”.

12 Subsection 8(2)

Omit “investigating a disclosure”, substitute “conducting the disclosure investigation”.

13 Subsection 8(2)

Omit “standard”, substitute “instrument”.

14 Section 8 (note 1)

Omit “an investigation of a disclosure”, substitute “a disclosure investigation under Division 2 of Part 3 of the Act”.

15 Section 8 (note 2)

Repeal the note, substitute:

Note 2: This Part does not apply in relation to a disclosure investigation by an investigative agency under a separate investigative power (see the definition of *disclosure investigation* in section 8 of the Act).

16 Section 8 (note 3)

Omit “standard”, substitute “instrument”.

17 At the end of subsection 9(1)

Add:

; or (d) decide to investigate the disclosure under another law or power.

18 Paragraph 10(1)(d)

Omit “section 57”, substitute “Part 2”.

19 Part 5

Repeal the Part, substitute:

Part 5—Information and assistance for Ombudsman reports

Note: See paragraph 74(1)(d).

14 Application of Part—reports and periods

This Part applies to an agency in relation to the preparation of the following reports (each of which is a *relevant report*):

- (a) an annual report by the Ombudsman under section 76 of the Act in relation to the operation of the Act during a financial year (the *period covered* by that report);
- (b) a 6-monthly report by the Ombudsman under section 76A of the Act in relation to the operation of the Act during the period from 1 July to 31 December (the *period covered* by that report) in a financial year.

Note: The principal officer of each agency is required to give the Ombudsman such information and assistance as the Ombudsman reasonably requires in relation to the preparation of annual reports and 6-monthly reports (see subsections 76(3) and 76A(3) of the Act).

15 Information to be given to the Ombudsman by principal officers

- (1) The principal officer of the agency must provide the following information to the Ombudsman for the purpose of preparing a relevant report:
 - (a) the number of public interest disclosures received by authorised officers of the agency during the period covered by the report;
 - (b) the kinds of disclosable conduct to which those public interest disclosures related;
 - (c) the number of disclosures allocated to the agency during the period covered by the report;
 - (d) the number of disclosure investigations that the principal officer conducted during the period covered by the report;
 - (e) the time taken to conduct those investigations;
 - (f) the actions that the principal officer has taken during the period covered by the report in response to recommendations in reports relating to those disclosure investigations;
 - (g) 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.

20 At the end of Part 6

Add:

17 Application of amendments made by the *Public Interest Disclosure Amendment (Review) Standard 2023*

Definition

- (1) In this section:

amending instrument means the *Public Interest Disclosure Amendment (Review) Standard 2023*.

Amendments of Part 2—procedures relating to disclosures

- (2) The amendments of Part 2 of this instrument made by Schedule 1 to the amending instrument apply in relation to decisions under the Act, and stop action directions under the NACC Act, made or given on or after the commencement of the amending instrument.

Repeal and substitution of Part 5—information and assistance for Ombudsman reports

- (3) Part 5 of this instrument, as substituted by Schedule 1 to the amending instrument, applies in relation to the information covered by section 15 of this instrument (as amended) based on the operation of the Act:
- (a) if this instrument commences between 1 January and 30 June in a calendar year—on and after 1 July in that year; or
 - (b) if this instrument commences between 1 July and 31 December in a calendar year—on and after 1 January in the following calendar year.