EXPLANATORY STATEMENT

Issued by authority of the Commonwealth Ombudsman

Public Interest Disclosure Act 2013

Public Interest Disclosure Standards Determination 2025

Section 74(1) of the *Public Interest Disclosure Act 2013* (the PID Act) provides that the Commonwealth Ombudsman may, by legislative instrument, determine standards in relation to specific matters, including procedures concerning internal disclosures, the conduct of and reporting on investigations under the PID Act, and annual and 6-monthly reporting.

Purpose and operation of the Instrument

The purpose of the Public Interest Disclosure Standards Determination 2025 (the Determination) is to repeal and replace the Public Interest Disclosure Standard 2013 (the old Standard). The old Standard will sunset on 1 April 2026.

The Determination commences on 1 April 2026 in accordance with section 2 of the Determination. The Determination enables the Ombudsman, in consultation with the Inspector-General of Intelligence and Security (the IGIS), to continue providing agencies covered by the PID Act with guidance intended to support good administration of the PID Scheme.

The Determination largely replicates the old Standard to improve its efficiency and effectiveness ahead of the Government's planned introduction to Parliament of a package of reforms to the PID Scheme by the end of 2025. The Determination will remain in place until reforms to the PID Act are made and commence.

Subsection 74(3) of the PID Act requires the Ombudsman to ensure that standards are in force under each of paragraphs (1)(a), (b) and (c) at all times after the commencement of that section. This requirement is met by the old Standard and the Determination.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. The Ombudsman relies upon the authority provided by subsection 33(3) to repeal the old Standard and replace it with the Determination.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*. The Determination is subject to disallowance.

Details of the Determination are set out in Attachment A.

Consultation

In accordance with subsection 74(2) of the PID Act, the Ombudsman consulted the IGIS on both the drafting instructions and the exposure draft of the Determination and Explanatory Statement.

On 29 September 2025, the Ombudsman consulted PID agencies on a limited circulation exposure draft of the Determination. Consultation closed on 3 October 2025, with written comments concerning minor and technical matters received from two PID agencies.

Public consultation on the exposure draft was not necessary, as the Determination only concerns obligations on PID agencies.

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B. The Determination does not raise any human rights issue.

ATTACHMENT A

Details of the *Public Interest Disclosure Standards Determination 2025*

Part 1—Preliminary

Section 1 – Name

Section 1 provides that the name of the instrument is the Public Interest Disclosure Standards Determination 2025 (the Determination).

Section 2 – Commencement

The Determination commences on 1 April 2026.

Section 3 – Authority

The Determination is made under subsection 74(1) of the *Public Interest Disclosure Act 2013* (the PID Act).

Section 4 – Schedules

Section 4 provides that each instrument that is specified in the Schedules to the Determination is amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to the Determination has effect according to its terms.

Section 5 – Definitions

Section 5 provides that the definition of 'Act' is the PID Act and includes a note directing users to relevant definitions in the PID Act.

Part 2—Procedures relating to disclosures

Section 6 – Purpose of the Part

Part 2 of the Determination is made for the purpose of determining standards relating to procedures to be complied with by the principal officers of agencies for dealing with internal disclosures and possible internal disclosures, pursuant to paragraph 74(1)(a) of the PID Act.

Section 7 – Contact details of authorised officers

Section 7 requires a principal officer of an agency to ensure that their agency provides effective means for potential disclosers to find out how to contact authorised officers within the agency.

This section does not prescribe how an agency must act to fulfill this, recognising that the standard may apply differently across agencies.

The note refers readers to the *Agency Guide to the Public Interest Disclosure Act 2013* on the website of the Office of the Commonwealth Ombudsman for further guidance.

Section 8 – Records of allocation and non-allocation of disclosures

Section 8 requires that procedures established by a principal officer of an agency under subsection 59(3) of the PID Act must require an authorised officer to keep an appropriate written record of certain matters when:

- a decision is made to allocate a disclosure to one or more agencies (or to reallocate disclosures made under section 45 of the PID Act)
- a decision is made not to allocate a disclosure to any agency
- the National Anti-Corruption Commission (NACC) makes a stop action direction under the *National Anti-Corruption Commission Act 2022* that prevents an authorised officer from allocating a disclosure to any agency.

Matters which authorised officers must be required to keep a written record of in relation to a decision to allocate or reallocate a disclosure to one or more agencies are:

- the decision (including the name of each agency to which the disclosure is to be allocated)
- the reasons for the decision
- any consultation with and, if required, the consent of the recipient agency prior to an authorised officer allocating a disclosure to another agency.

Matters which authorised officers must be required to keep a written record of in relation to a decision not to allocate a disclosure to any agency are:

- the decision
- the reasons for the decision
- if the disclosure is more appropriately investigated under another law or power, that other law or power and steps taken to refer under that law or power, or advice provided to the discloser on alternative courses of action under another law or power if conduct would not be referred under another law or power.

In the case of a stop action direction issued by the NACC Commissioner that prevents allocation to an agency, authorised officers must be required to keep a written record of the details of the stop action direction, including when the direction was made and ends.

Section 9 – Records of notice of allocation decisions

Section 9 requires that procedures established by a principal officer under subsection 59(3) of the PID Act must require that an authorised officer retain appropriate written records of certain matters relating to notices of decisions to allocate or not allocate a disclosure, and circumstances where allocation is prevented in whole or in part because of a stop action direction issued by the NACC Commissioner under section 44B of the PID Act.

The matters to which an authorised officer must be required to keep a written record of are:

- whether the discloser was informed of the decision, and if not the reasons why
- the circumstances of that notice, including the day and time the discloser was notified, and the means by which the discloser was notified

- in the case of a stop action direction issued by the NACC Commissioner, whether the relevant principal officer considered notice to the discloser of the stop action direction as reasonably practicable or appropriate.

Section 10 – Records of decisions to investigate or not investigate a disclosure

Section 10 requires that procedures established by a principal officer under subsection 59(3) of the PID Act must require that an agency retain appropriate written records of certain matters relating to decisions under Division 2 of Part 3 of the PID Act to investigate a disclosure, not to investigate a disclosure, or not to investigate a disclosure further.

Matters which an agency must retain appropriate written records for in relation to a decision to investigate a disclosure are:

- when and how a discloser was provided with a notice under section 50(1A) of the PID Act, a written notice of completion of the investigation, and a copy of the investigation report
- if the notices or a copy of the report were not given to the discloser, the reasons why they were not given to the discloser.

Matters which an agency must retain appropriate written records for in relation to a decision not to investigate a disclosure or not to investigate a disclosure further are:

- the decision to exercise the discretion to not investigate a disclosure pursuant to section 48 of the PID Act, and the reasons for the decision
- if the disclosure is, on reasonable grounds, more appropriately investigated under another law or power, that other law or power, the relevant agency or person or body to be referred to, and steps taken to refer under that law or power
- when and how a discloser was provided with a notice under section 50(2) of the PID Act, or, if such notice was not provided, the reasons why notice was not given.

Section 11 – Support for public officials and certain other persons

Section 11 requires that the principal officer of the agency must, in its procedures under subsection 59(3) of the PID Act, outline the support mechanisms (whatever those might be) that the agency makes available to public officials who make disclosures, persons who provide assistance in relation to a disclosure, or persons who are subject of a disclosure relating to their agency. This requirement applies whether or not those persons belong to the agency for the purposes of the PID Act, as section 12A of the PID Act does not limit the individuals who provide assistance in relation to a disclosure to only public officials.

Part 3—Conduct of disclosure investigations under Division 2 of Part 3 of the Act

Section 12 – Purpose of Part

Part 3 of the Determination is made for the purpose of determining standards relating to the conduct of investigations under the PID Act, pursuant to paragraph 74(1)(b) of the PID Act.

Section 13 – Application of Part

Part 3 of the Determination applies to a principal officer of an agency who is conducting a disclosure investigation under the PID Act.

When conducting an investigation of a disclosure that relates to one or more instances of fraud or alleged fraud, a principal officer is required to act in accordance with the rules concerning fraud made for the purposes of the *Public Governance, Performance and Accountability Act 2013* (the Fraud Rules), to the extent that the Fraud Rules are not inconsistent with the PID Act (apart from subsections 53(1) and (2) of the PID Act).

Therefore, during an investigation concerning fraud, if any conflict arises between the Fraud Rules and Part 3 of the Determination, agencies must act in accordance with the Fraud Rules.

This Part does not apply to a disclosure investigation by an investigative agency under a separate investigative power, such as a disclosure investigation under the *Ombudsman Act 1976*.

Section 14 – Initial information for disclosers

Section 14 provides that a discloser must be given initial information about the principal officer's discretion to decide the following matters in relation to a disclosure:

- not to investigate the disclosure
- not to investigate the disclosure further
- to investigate the disclosure under a separate investigative power
- to investigate the disclosure under another law or power.

The initial information must be given to the discloser within 14 days of a disclosure being allocated, if it is reasonably practicable to do so.

However, the principal officer need not provide the initial information if they are reasonably satisfied the initial information has already been given to the discloser by an authorised officer in a notice under section 44 of the PID Act.

Section 15 – Conducting an interview

Subsection 15(1) requires a principal officer to inform an interviewee of several matters as part of a disclosure investigation:

- the identity and function of each individual conducting the interview
- the process of conducting an investigation
- the authority of the principal officer under the PID Act to conduct the investigation
- the protections provided by Part 2 of the PID Act.

This requirement is, however, subject to any restrictions imposed by any other law of the Commonwealth.

Subsection 15(2) requires a principal officer to ensure that:

- any audio or visual recording of an interview is not made without the interviewee's knowledge

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

Section 16 – Standard of Proof

Section 16 requires the determination of any facts in dispute to be made on the balance of probabilities, meaning a fact can be taken to be proved if the principal officer is satisfied that it is more likely than not that the fact is true.

Section 17 – Evidence

Section 17 requires that findings of fact made by a principal officer must be based on evidence that tends logically to prove the existence or non-existence of a fact, and that evidence must be relevant to an investigation insofar that it is of consequence to that investigation and makes a fact more or less probable than in the evidence's absence.

Part 4—Reports of Investigations

Section 18 – Purpose of Part

Part 4 of the Determination is made for the purpose of determining standards relating to the preparation of reports of investigations under the PID Act, pursuant to paragraph 74(1)(c) of the PID Act.

Section 19 – Report of investigation

Section 19 states that a report prepared under section 51 of the PID Act must, where relevant:

a. identify the instance(s) of disclosable conduct
b. identify any regulations, rules, administrative requirements or similar matters (e.g. code of conduct or conventions) to which the relevant disclosable conduct relates
c. explain the steps taken to gather evidence for the purpose of the investigation
d. set out a summary of the evidence, as well as any findings and recommendations made based on that evidence
e. include an explanation as to how any findings and recommendations are supported by the evidence.

Matters under paragraphs (a) and (b) of section 19 of the Determination are matters considered in the course of the investigation and relate to paragraph 51(2)(a) of the PID Act.

Matters under paragraphs (c), (d) and (e) of section 19 of the Determination are matters considered in the course of the investigation (and any findings made by the principal officer) and relate to both paragraphs 51(2)(a) and (c) of the PID Act.

Part 5—Information and assistance for Ombudsman reports

Section 20 – Purpose of Part

Part 5 of the Determination is made for the purpose of determining standards relating to the giving of information and assistance by the principal officer of an agency to the Ombudsman, and standards relating to the keeping of records, in relation to the preparation of annual reports and six-monthly reports by the Ombudsman, pursuant to paragraph 74(1)(d) of the PID Act.

Section 21 – Application of Part—reports and periods

Section 21 provides that Part 5 of the Determination applies to a principal officer of an agency in relation to the preparation, under sections 76 and 76A of the PID Act, of annual reports and six-monthly reports by the Ombudsman, respectively.

While section 74 of the PID Act does not provide the Ombudsman with express authority to make standards relating to six-monthly reports under section 76A, subsection 76A(3) (by applying subsections 76(3) and (4)) gives the Ombudsman implied authority to require the preparation of six-monthly reports in the same way as annual reports.

Section 22 – Information to be given to the Ombudsman by principal officers

Section 22 provides that a principal officer of an agency must provide certain information to the Ombudsman for the purposes of preparing the Ombudsman's annual report and six-monthly report under the PID Act. This information is:

- the number of disclosures received by authorised officers of the agency, the kinds of disclosable conduct to which those disclosures related, and the number of disclosures allocated to the agency
- the number of disclosure investigations that the principal officer conducted during the period covered by the report, and the time taken to conduct those investigations
- 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
- any other information requested by the Ombudsman.

Subsection 22(2) states that a principal officer must provide this information to the Ombudsman within a period of time as requested by, or agreed with, the Ombudsman. The note to the section indicates that in the case of an agency for which the IGIS is responsible for (that is, an intelligence agency) the Ombudsman would make any relevant request for information through the IGIS.

Part 6—Application, saving and transitional provisions

Section 23 – Definitions

Section 23 provides that 'commencement day' means the day the Determination commences, and 'old Standard' refers to the Public Interest Disclosure Standard 2013.

Section 24 – Application of this Instrument

Section 24 provides that procedures relating to disclosures under sections 8, 9 and 10 will apply to decisions made under the PID Act, or stop action directions made under the NACC Act, on or after the commencement day.

Part 3 and 4 of the old Standard will continue to apply to investigations commenced, but not completed, before the commencement of the Determination.

Schedule 1—Repeals

The Determination repeals the old Standard.

ATTACHMENT B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011

Public Interest Disclosure Standards Determination 2025

The Public Interest Disclosure Standards Determination 2025 (the Determination) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Section 74(1) of the *Public Interest Disclosure Act 2013* (the PID Act) provides that the Commonwealth Ombudsman may, by legislative instrument, determine standards in relation to specific matters, including procedures concerning internal disclosures, the conduct of and reporting on investigations under the PID Act, and annual and 6-monthly reporting.

The Determination repeals and replaces the Public Interest Disclosure Standard 2013 (the old Standard), which is made under section 74(1) of the PID Act.

The Determination commences on 1 April 2026 in accordance with section 2 of the Determination. The Determination enables the Ombudsman, in consultation with the Inspector-General of Intelligence and Security (the IGIS), to continue providing agencies covered by the PID Act with guidance intended to support good administration of the PID Scheme.

The Determination largely replicates the Standard to improve its efficiency and effectiveness and minimise regulatory impact on PID agencies ahead of the Government's planned introduction to Parliament of a package of reforms to the PID Scheme by the end of 2025. The Determination will remain in place until reforms to the PID Act are passed and commence.

The Determination is of a technical and procedural nature, and the requirements it imposes are on agencies covered by the PID Act to support good administration of the PID scheme, not upon individual citizens in a private capacity. Therefore, the Determination does not engage any of the applicable rights or freedoms.

Human rights implications

The Determination does not engage any of the applicable rights or freedoms.

Conclusion

The Determination is compatible with human rights as it does not raise any human rights issues.