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Public Interest Disclosure Bill 2013

No. , 2013

(Public Service and Integrity)

**A Bill for an Act to facilitate disclosure and
investigation of wrongdoing and maladministration
in the Commonwealth public sector, and for other
purposes**

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1 **A Bill for an Act to facilitate disclosure and**
2 **investigation of wrongdoing and maladministration**
3 **in the Commonwealth public sector, and for other**
4 **purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Introduction**

7 **Division 1—Preliminary matters**

8 **1 Short title**

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

Section 2

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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
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.	

Note: This table relates only to the provisions of this Act as originally enacted.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.

1 **5 Extension to things outside Australia**

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

1 **Division 2—Objects**

2 **6 Objects**

3 The objects of this Act are:

- 4 (a) to promote the integrity and accountability of the
5 Commonwealth public sector; and
6 (b) to encourage and facilitate the making of public interest
7 disclosures by public officials; and
8 (c) to ensure that public officials who make public interest
9 disclosures are supported and are protected from adverse
10 consequences relating to the disclosures; and
11 (d) to ensure that disclosures by public officials are properly
12 investigated and dealt with.

Division 3—Overview

7 Overview

(1) This Act:

- (a) provides a means for protecting public officials, and former public officials, from adverse consequences of disclosing information that, in the public interest, should be disclosed; and
- (b) provides for the investigation of matters that are disclosed.

Protection of disclosers

(2) Part 2 provides the following for public interest disclosures:

- (a) immunity from liability;
- (b) offences and civil remedies for reprisals taken against disclosers;
- (c) offences for disclosure of the identity of disclosers.

Division 2 of Part 2 sets out 4 kinds of public interest disclosures.

Investigations

(3) Part 3 provides for:

- (a) allocation of the handling of disclosures to appropriate agencies; and
- (b) investigation of disclosures by the principal officers of the allocated agencies (but investigative agencies may instead use their separate investigative powers).

Administrative matters

(4) Part 4 provides for:

- (a) additional obligations and functions supporting the operation of this Act; and
- (b) offences protecting information obtained through processes connected with this Act; and
- (c) definitions of key concepts relating to officials and agencies.

1 **Division 4—Definitions**

2 **8 Definitions**

3 In this Act:

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

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

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

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

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

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

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

15 **Cabinet information** means:

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

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

23 **Commonwealth company** has the same meaning as in the
24 *Commonwealth Authorities and Companies Act 1997*.

25 **Commonwealth contract** has the meaning given by
26 subsection 30(3).

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

Section 8

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

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

- 6 (a) the Defence Force; and
- 7 (b) the Australian Army Cadets; and
- 8 (c) the Australian Navy Cadets; and
- 9 (d) the Australian Air Force Cadets.

10 **Department** means:

- 11 (a) a Department of State (including the Defence Department),
12 excluding any part that is itself an Executive Agency or
13 Statutory Agency; or
- 14 (b) a Department of the Parliament that is established under the
15 *Parliamentary Service Act 1999*.

16 **designated publication restriction** has the meaning given by
17 section 40.

18 **detriment** includes the meaning given by subsection 13(2).

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

21 **disclose** includes re-disclose.

22 **disclosure investigation** means:

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

27 **engage in conduct** means:

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

30 **Executive Agency** has the same meaning as in the *Public Service*
31 *Act 1999*.

Section 8

1 ***Federal Circuit Court*** means the Federal Circuit Court of
2 Australia.

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

4 ***foreign country*** includes:

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

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

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

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

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

18 ***inadequate***, in relation to an investigation under Part 3 or a
19 response to a disclosure investigation, has the meaning given by
20 Subdivision D of Division 2 of Part 2.

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

23 ***intelligence agency*** means:

- 24 (a) the Australian Secret Intelligence Service; or
25 (b) the Australian Security Intelligence Organisation; or
26 (c) the Defence Imagery and Geospatial Organisation; or
27 (d) the Defence Intelligence Organisation; or
28 (e) the Defence Signals Directorate; or
29 (f) the Office of National Assessments.

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

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

Section 8

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

3 ***international organisation*** means an organisation:

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

9 ***investigate***, in relation to a disclosure, has the meaning given by
10 subsections 47(2) to (4).

11 ***investigative agency*** means:

- 12 (a) the Ombudsman; or
13 (b) the IGIS; or
14 (c) an agency that is prescribed by the PID rules to be an
15 investigative agency for the purposes of this Act.

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

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

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

22 ***official of a registered industrial organisation*** means a person
23 who holds an office (within the meaning of the *Fair Work Act*
24 *2009*) in an organisation registered, or an association recognised,
25 under the *Fair Work (Registered Organisations) Act 2009*.

26 ***Ombudsman*** means the Commonwealth Ombudsman.

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

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

Section 8

- 1 ***prescribed authority*** has the meaning given by section 72.
- 2 ***principal officer***, in relation to an agency, has the meaning given
- 3 by section 73.
- 4 ***public interest disclosure*** has the meaning given by Subdivision A
- 5 of Division 2 of Part 2.
- 6 ***public official*** has the meaning given by Subdivision A of
- 7 Division 3 of Part 4.
- 8 ***recipient***, in relation to a disclosure of information, means the
- 9 person to whom the information is disclosed.
- 10 ***relates***: section 35 sets out when conduct ***relates*** to an agency.
- 11 ***Royal Commission*** has the meaning given by the *Royal*
- 12 *Commissions Act 1902*.
- 13 ***sensitive law enforcement information*** has the meaning given by
- 14 subsection 41(2).
- 15 ***separate investigative power*** has the meaning given by
- 16 subsection 49(2).
- 17 ***Statutory Agency*** has the same meaning as in the *Public Service*
- 18 *Act 1999*.
- 19 ***statutory officeholder*** has the meaning given by subsection 69(2).
- 20 ***suspected disclosable conduct*** has the meaning given by
- 21 subparagraph 43(3)(a)(i).
- 22 ***takes a reprisal*** has the meaning given by section 13.

1 **Part 2—Protection of disclosers**

2 **Division 1—Protections**

3 **9 Simplified outline**

4 The following is a simplified outline of this Division:

5 An individual is not subject to any civil, criminal or administrative
6 liability for making a public interest disclosure.

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

10 The Federal Court or Federal Circuit Court may make orders for
11 civil remedies (including compensation, injunctions and
12 reinstatement of employment) if a reprisal is taken against a person
13 because of a public interest disclosure (including a proposed or a
14 suspected public interest disclosure).

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

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

18 Note 2: The principal officer of an agency has a duty to protect a public
19 official who belongs to the agency from detriment that relates to a
20 public interest disclosure made by the public official (see section 59).

21 **Subdivision A—Immunity from liability**

22 **10 Protection of disclosers**

- 23 (1) If an individual makes a public interest disclosure:
24 (a) the individual is not subject to any civil, criminal or
25 administrative liability (including disciplinary action) for
26 making the public interest disclosure; and

Section 11

1 (b) no contractual or other remedy may be enforced, and no
2 contractual or other right may be exercised, against the
3 individual on the basis of the public interest disclosure.

4 (2) Without limiting subsection (1):

5 (a) the individual has absolute privilege in proceedings for
6 defamation in respect of the public interest disclosure; and

7 (b) a contract to which the individual is a party must not be
8 terminated on the basis that the public interest disclosure
9 constitutes a breach of the contract.

10 **11 Liability for false or misleading statements etc. unaffected**

11 (1) Section 10 does not apply to civil, criminal or administrative
12 liability (including disciplinary action) for making a statement that
13 is false or misleading.

14 (2) Without limiting subsection (1) of this section, section 10 does not
15 apply to liability for an offence against section 137.1, 137.2, 144.1
16 or 145.1 of the *Criminal Code*.

17 **12 Discloser's liability for own conduct not affected**

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

21 **Subdivision B—Protection from reprisals**

22 **13 What constitutes taking a reprisal**

23 (1) A person (the *first person*) *takes a reprisal* against another person
24 (the *second person*) if:

25 (a) the first person causes (by act or omission) any detriment to
26 the second person; and

27 (b) when the act or omission occurs, the first person believes or
28 suspects that the second person or any other person made,
29 may have made or proposes to make a public interest
30 disclosure; and

Section 14

- 1 (c) that belief or suspicion is the reason, or part of the reason, for
2 the act or omission.
- 3 (2) **Detriment** includes any disadvantage, including (without
4 limitation) any of the following:
- 5 (a) dismissal of an employee;
6 (b) injury of an employee in his or her employment;
7 (c) alteration of an employee's position to his or her detriment;
8 (d) discrimination between an employee and other employees of
9 the same employer.
- 10 (3) Despite subsection (1), a person does not take a reprisal against
11 another person to the extent that the person takes administrative
12 action that is reasonable to protect the other person from detriment.

14 Compensation

- 14 (1) If the Federal Court or Federal Circuit Court is satisfied, on the
15 application of a person (the **applicant**), that another person (the
16 **respondent**) took or threatened to take, or is taking or threatening
17 to take, a reprisal against the applicant, the Court may:
- 18 (a) in any case—make an order requiring the respondent to
19 compensate the applicant for loss, damage or injury as a
20 result of the reprisal or threat; or
- 21 (b) if the Court is satisfied that the respondent took or threatened
22 to take, or is taking or threatening to take, the reprisal in
23 connection with the respondent's position as an employee:
- 24 (i) make an order requiring the respondent to compensate
25 the applicant for a part of loss, damage or injury as a
26 result of the reprisal or threat, and make another order
27 requiring the respondent's employer to compensate the
28 applicant for a part of loss, damage or injury as a result
29 of the reprisal or threat; or
- 30 (ii) make an order requiring the respondent and the
31 respondent's employer jointly to compensate the
32 applicant for loss, damage or injury as a result of the
33 reprisal or threat; or

Section 15

- 1 (iii) make an order requiring the respondent's employer to
2 compensate the applicant for loss, damage or injury as a
3 result of the reprisal or threat.
- 4 (2) The Federal Court or Federal Circuit Court must not make an order
5 under paragraph (1)(b) if the respondent's employer establishes
6 that it took reasonable precautions, and exercised due diligence, to
7 avoid the reprisal or threat.
- 8 (3) If the Federal Court or Federal Circuit Court makes an order under
9 subparagraph (1)(b)(ii), the respondent and the respondent's
10 employer are jointly and severally liable to pay the compensation
11 concerned.

12 **15 Injunctions, apologies and other orders**

- 13 (1) If the Federal Court or Federal Circuit Court is satisfied, on the
14 application of a person (the *applicant*), that another person (the
15 *respondent*) took or threatened to take, or is taking or threatening
16 to take, a reprisal against the applicant, the Court may make any or
17 all of the following orders:
- 18 (a) an order granting an injunction, on such terms as the Court
19 thinks appropriate:
- 20 (i) restraining the respondent from taking, or threatening to
21 take, the reprisal; or
- 22 (ii) if the reprisal or threat involves refusing or failing to do
23 something—requiring the respondent to do that thing;
- 24 (b) an order requiring the respondent to apologise to the
25 applicant for taking, or threatening to take, the reprisal;
- 26 (c) any other order the Court thinks appropriate.
- 27 (2) If the Federal Court or Federal Circuit Court has power under
28 subsection (1) to grant an injunction restraining a person from
29 engaging in particular conduct, or requiring a person to do
30 anything, the Court may make any other orders (including granting
31 an injunction) that it thinks appropriate against any other person
32 who has:
- 33 (a) aided, abetted, counselled or procured the conduct against the
34 applicant; or

Section 16

- (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 Court 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 Court may make orders under sections 14, 15 and 16 in respect of the same conduct.

18 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 Court 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:

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- 1 (a) section 539 of the *Fair Work Act 2009* for an order in relation
2 to a contravention of section 340 or 772 of that Act
3 constituted by particular conduct; or
4 (b) section 394 of the *Fair Work Act 2009* for an order in relation
5 to particular conduct;
6 if another application has been made for an order under section 14,
7 15 or 16 of this Act in relation to the same conduct.
- 8 (3) This section does not apply if the other application mentioned in
9 subsection (1) or (2) has been discontinued or has failed for want
10 of jurisdiction.

19 Offences

Taking a reprisal

- 12 (1) A person commits an offence if the person takes a reprisal against
13 another person.
14
15 Penalty: Imprisonment for 6 months or 30 penalty units, or both.
- 16 (2) In a prosecution for an offence against subsection (1), it is not
17 necessary to prove that the other person made, may have made or
18 intended to make a public interest disclosure.

Threatening to take a reprisal

- 19 (3) A person (the **first person**) commits an offence if:
20 (a) the first person makes a threat to another person (the **second**
21 **person**) to take a reprisal against the second person or a third
22 person; and
23 (b) the first person:
24 (i) intends the second person to fear that the threat will be
25 carried out; or
26 (ii) is reckless as to the second person fearing that the threat
27 will be carried out.
28
29 Penalty: Imprisonment for 6 months or 30 penalty units, or both.
- 30 (4) For the purposes of subsection (3), the threat may be:
31 (a) express or implied; or

1 (b) conditional or unconditional.

2 (5) In a prosecution for an offence under subsection (3), it is not
3 necessary to prove that the person threatened actually feared that
4 the threat would be carried out.

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

6 **20 Use or disclosure of identifying information**

7 *Disclosure of identifying information*

8 (1) A person (the **first person**) commits an offence if:

9 (a) another person (the **second person**) has made a public
10 interest disclosure; and

11 (b) the first person discloses information (**identifying**
12 **information**) that:

13 (i) was obtained by any person in that person's capacity as
14 a public official; and

15 (ii) is likely to enable the identification of the second person
16 as a person who has made a public interest disclosure;
17 and

18 (c) the disclosure is to a person other than the second person.

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

20 *Use of identifying information*

21 (2) A person (the **first person**) commits an offence if the person uses
22 identifying information.

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

24 *Exceptions*

25 (3) Subsections (1) and (2) do not apply if one or more of the
26 following applies:

27 (a) the disclosure or use of the identifying information is for the
28 purposes of this Act;

Section 21

- 1 (b) the disclosure or use of the identifying information is in
2 connection with the performance of a function conferred on
3 the Ombudsman by section 5A of the *Ombudsman Act 1976*;
4 (c) the disclosure or use of the identifying information is in
5 connection with the performance of a function conferred on
6 the IGIS by section 8A of the *Inspector-General of*
7 *Intelligence and Security Act 1986*;
8 (d) the disclosure or use of the identifying information is for the
9 purposes of:
10 (i) a law of the Commonwealth; or
11 (ii) a prescribed law of a State or a Territory;
12 (e) the person who is the second person in relation to the
13 identifying information has consented to the disclosure or use
14 of the identifying information;
15 (f) the identifying information has previously been lawfully
16 published.

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

19 **21 Identifying information not to be disclosed etc. to courts or**
20 **tribunals**

21 A person who is, or has been, a public official is not to be required:
22 (a) to disclose to a court or tribunal identifying information that
23 the person has obtained; or
24 (b) to produce to a court or tribunal a document containing
25 identifying information that the person has obtained;
26 except where it is necessary to do so for the purposes of giving
27 effect to this Act.

28 **Subdivision D—Miscellaneous**

29 **22 Interaction with protections under Part 3-1 of the *Fair Work Act***
30 **2009**

31 Without limiting the operation of the *Fair Work Act 2009*, Part 3-1
32 of that Act applies in relation to the making of a public interest

1 disclosure by a public official who is an employee as if, for the
2 purposes of that Act:

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

6 **23 Claims for protection**

- 7 (1) If, in civil or criminal proceedings (the *primary proceedings*)
8 instituted against an individual in a court, the individual makes a
9 claim (relevant to the proceedings) that, because of section 10, the
10 individual is not subject to any civil, criminal or administrative
11 liability for making a particular public interest disclosure:
12 (a) the individual bears the onus of adducing or pointing to
13 evidence that suggests a reasonable possibility that the claim
14 is made out; and
15 (b) if the individual discharges that onus—the party instituting
16 the primary proceedings against the individual bears the onus
17 of proving that the claim is not made out; and
18 (c) the court must deal with the claim in separate proceedings;
19 and
20 (d) the court must adjourn the primary proceedings until the
21 claim has been dealt with; and
22 (e) none of the following:
23 (i) any admission made by the individual in the separate
24 proceedings;
25 (ii) any information given by the individual in the separate
26 proceedings;
27 (iii) any other evidence adduced by the individual in the
28 separate proceedings;
29 is admissible in evidence against the individual except in
30 proceedings in respect of the falsity of the admission,
31 information or evidence; and
32 (f) if the individual or another person gives evidence in the
33 separate proceedings in support of the claim—giving that
34 evidence does not amount to a waiver of privilege for the
35 purposes of the primary proceedings or any other
36 proceedings.

Part 2 Protection of disclosers

Division 1 Protections

Section 24

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

4 **24 Protections have effect despite other Commonwealth laws**

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

- 7 (a) the provision is enacted after the commencement of this
8 section; and
9 (b) the provision is expressed to have effect despite this Part or
10 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, that is:

- a disclosure within the government, to an authorised internal recipient, 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.

However, there are limitations to take into account designated publication restrictions and the need to protect intelligence information.

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

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

Subdivision A—Public interest disclosures

26 Meaning of *public interest disclosure*

(1) A disclosure of information is a *public interest disclosure* if:

Section 26

- 1 (a) the disclosure is made by a person (the *discloser*) who is, or
2 has been, a public official; and
3 (b) the recipient of the information is a person of the kind
4 referred to in column 2 of an item of the following table; and
5 (c) all the further requirements set out in column 3 of that item
6 are met:
7

Public interest disclosures			
Item	Column 1 Type of disclosure	Column 2 Recipient	Column 3 Further requirements
1	Internal disclosure	An authorised internal recipient	(a) The discloser believes on reasonable grounds that the information may concern one or more instances of disclosable conduct. (b) The disclosure is not contrary to a designated publication restriction.
2	External disclosure	Any person other than a foreign public official	(a) The discloser believes on reasonable grounds that the information may concern 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. (c) Either or both of the following applies: (i) a disclosure investigation relating to the internal disclosure has been completed; (ii) this Act requires an investigation to be conducted under Part 3, and that investigation has not been completed within the time limit under section 52. (d) Either or both of the following applies: (i) if the disclosure investigation was an investigation under

Section 26

Public interest disclosures			
Item	Column 1 Type of disclosure	Column 2 Recipient	Column 3 Further requirements
			<p>Part 3—the investigation was inadequate;</p> <p>(ii) in any case—the response to the investigation was inadequate.</p> <p>(e) The disclosure is not, on balance, contrary to the public interest.</p> <p>(f) No more information is publicly disclosed than is reasonably necessary in the public interest.</p> <p>(g) The disclosure is not contrary to a designated publication restriction.</p> <p>(h) The information does not consist of, or include, intelligence information.</p> <p>(i) None of the conduct with which the disclosure is concerned relates to an intelligence agency.</p>
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.</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</p>

Section 26

Public interest disclosures			
Item	Column 1 Type of disclosure	Column 2 Recipient	Column 3 Further requirements
			is completed. (e) The disclosure is not contrary to a designated publication restriction. (f) The information does not consist of, or include, intelligence information.
4	Legal practitioner disclosure	An Australian legal practitioner	(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. (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 appropriate level of security clearance. (c) The information does not consist of, or include, intelligence information.

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(2) However, a disclosure made before the commencement of this section is not a **public interest disclosure**.

(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:

(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;

Section 27

- 1 (vi) the relations between the Commonwealth and the
2 Northern Territory;
3 (vii) the relations between the Commonwealth and Norfolk
4 Island;
5 (b) if any of the information disclosed in the disclosure is
6 Cabinet information—the principle that Cabinet information
7 should remain confidential unless it is already lawfully
8 publicly available;
9 (c) if any of the information disclosed in the disclosure was
10 communicated in confidence by or on behalf of:
11 (i) a foreign government; or
12 (ii) an authority of a foreign government; or
13 (iii) an international organisation;
14 the principle that such information should remain
15 confidential unless that government, authority or
16 organisation, as the case may be, consents to the disclosure of
17 the information;
18 (d) any risk that the disclosure could prejudice the proper
19 administration of justice;
20 (e) the principle that legal professional privilege should be
21 maintained;
22 (f) any other relevant matters.

23 **27 Associated allegations**

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

31 **28 How a public interest disclosure may be made**

- 32 (1) A public interest disclosure may be made orally or in writing.
33 (2) A public interest disclosure may be made anonymously.

Section 29

- 1 (3) A public interest disclosure may be made without the discloser
2 asserting that the disclosure is made for the purposes of this Act.

3 **Subdivision B—Disclosable conduct**

4 **29 Meaning of *disclosable conduct***

- 5 (1) ***Disclosable conduct*** is conduct of a kind mentioned in the
6 following table that is conduct:
7 (a) engaged in by an agency; or
8 (b) engaged in by a public official, in connection with his or her
9 position as a public official; or
10 (c) engaged in by a contracted service provider for a
11 Commonwealth contract, in connection with entering into, or
12 giving effect to, that contract:
13

Disclosable conduct

Item Kinds of disclosable conduct

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: (a) is in force in the foreign country; and (b) is applicable to the agency, public official or contracted service provider; and (c) corresponds to a law in force in the Australian Capital Territory.
3	Conduct that: (a) perverts, or is engaged in for the purpose of perverting, or attempting to pervert, the course of justice; or (b) involves, or is engaged in for the purpose of, corruption of any other kind.
4	Conduct that constitutes maladministration, including conduct that: (a) is based, in whole or in part, on improper motives; or (b) is unreasonable, unjust or oppressive; or (c) is negligent.
5	Conduct that is an abuse of public trust.
6	Conduct that is:

Section 29

Disclosable conduct

Item Kinds of disclosable conduct

- (a) fabrication, falsification, plagiarism, or deception, in relation to:
 - (i) proposing scientific research; or
 - (ii) carrying out scientific research; or
 - (iii) reporting the results of scientific research; or
 - (b) misconduct relating to scientific analysis, scientific evaluation or the giving of scientific advice.
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- 7 Conduct that results in the wastage of:
- (a) public money (within the meaning of the *Financial Management and Accountability Act 1997*); or
 - (b) public property (within the meaning of that Act); or
 - (c) money of a prescribed authority; or
 - (d) property of a prescribed authority.
-

- 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.
-

- 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 against the public official.

- (3) For the purposes of this section, it is immaterial:

- (a) whether conduct occurred before or after the commencement of this section; or

Section 30

- 1 (b) if an agency has engaged in conduct—whether the agency
- 2 has ceased to exist after the conduct occurred; or
- 3 (c) if a public official has engaged in conduct—whether the
- 4 public official has ceased to be a public official after the
- 5 conduct occurred; or
- 6 (d) if a contracted service provider has engaged in conduct—
- 7 whether the contracted service provider has ceased to be a
- 8 contracted service provider after the conduct occurred.

9 **30 Officers or employees of a contracted service provider**

- 10 (1) For the purposes of this Act, if an individual is a public official
- 11 because the individual:
- 12 (a) is an officer or employee of a contracted service provider for
- 13 a Commonwealth contract; and
- 14 (b) provides services for the purposes (whether direct or indirect)
- 15 of the Commonwealth contract;
- 16 the individual does not engage in conduct in connection with his or
- 17 her position as such a public official unless the conduct is in
- 18 connection with entering into, or giving effect to, the contract.
- 19 (2) A **contracted service provider** for a Commonwealth contract is:
- 20 (a) a person who:
- 21 (i) is a party to the Commonwealth contract; and
- 22 (ii) is responsible for the provision of goods or services
- 23 under the Commonwealth contract; or
- 24 (b) a person who:
- 25 (i) is a party to a contract (the **subcontract**) with a person
- 26 who is a contracted service provider for the
- 27 Commonwealth contract under paragraph (a) (or under a
- 28 previous application of this paragraph); or
- 29 (ii) who is responsible under the subcontract for the
- 30 provision of goods or services for the purposes (whether
- 31 direct or indirect) of the Commonwealth contract.
- 32 (3) A **Commonwealth contract** is a contract:
- 33 (a) to which the Commonwealth or a prescribed authority is a
- 34 party; and

Section 31

- 1 (b) under which goods or services are to be, or were to be,
2 provided:
3 (i) to the Commonwealth or a prescribed authority; or
4 (ii) for or on behalf of the Commonwealth or a prescribed
5 authority, and in connection with the performance of its
6 functions or the exercise of its powers.

7 **31 Disagreements with government policies etc.**

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

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

20 **32 Conduct connected with courts or tribunals**

- 21 (1) Despite section 29, conduct is not *disclosable conduct* if it is:
22 (a) conduct of a judicial officer; or
23 (b) conduct of:
24 (i) the chief executive officer of a court; or
25 (ii) a member of the staff of the chief executive officer of a
26 court;
27 when exercising a power of the court, performing a function
28 of a judicial nature or exercising a power of a judicial nature;
29 or
30 (c) conduct of:
31 (i) a member of a tribunal; or
32 (ii) the chief executive officer of a tribunal; or

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

9 (2) **Judicial officer** means:

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

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

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

24 For this purpose, a judicial officer of the court, or a member of the
25 tribunal, is not taken to be an officer of the court or tribunal.

26 Note: For declaration by class, see subsection 13(3) of the *Legislative*
27 *Instruments Act 2003*.

28 33 Conduct connected with intelligence agencies

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

- 30 (a) conduct that an intelligence agency engages in in the proper
31 performance of its functions or the proper exercise of its
32 powers; or

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- (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:

Authorised internal recipients

Item	Column 1 If the conduct with which the disclosure is concerned relates to:	Column 2 An authorised officer of any of the following agencies is an <i>authorised internal recipient</i> of the disclosure:
1	an agency (other than an intelligence agency, the Ombudsman or the IGIS)	(a) in any case—that agency; (b) the agency to which the discloser belongs, or last belonged; (c) if the discloser believes on reasonable grounds that it would be appropriate for the disclosure to be investigated by the Ombudsman—the Ombudsman; (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.
2	an intelligence agency	(a) in any case—the intelligence agency; (b) if the discloser believes on reasonable grounds that it would be appropriate for the disclosure to be investigated by the IGIS—the IGIS; (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

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

(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.

(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.

(3) Despite subsections (1) and (2), if an agency ceases to exist, conduct that occurred before the cessation and that would, apart from this subsection, relate to the agency is instead taken, for the purposes of this Act, to relate to another agency if:

- (a) the other agency acquired all of the functions of the agency that ceased to exist; or
- (b) the other agency acquired some of those functions, and the conduct most closely relates to the functions the other agency acquired; or

1 (c) the PID rules prescribe that, for the purposes of this Act, the
2 other agency replaces the agency that ceased to exist.
3 It is immaterial whether the cessation occurred before or after the
4 commencement of this section.

5 **36 Meaning of *authorised officer***

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

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

13 **Subdivision D—External disclosures: inadequate investigations**
14 **and responses to investigations**

15 **37 When investigations under Part 3 are inadequate**

16 An investigation under Part 3 is *inadequate* if and only if:

- 17 (a) the investigation has not been completed within the time limit
18 under section 52; or
19 (b) there has been a failure to obtain, in the course of conducting
20 the investigation, information that is reasonably available,
21 relevant and materially significant; or
22 (c) any findings set out in the report of the investigation are such
23 that no reasonable person could have reached them on the
24 basis of the information obtained in the course of conducting
25 the investigation; or
26 (d) the report of the investigation does not set out findings or
27 recommendations that could reasonably be expected to have
28 been made on the basis of the information obtained in the
29 course of conducting the investigation.

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38 When responses to investigations under Part 3 are inadequate

- (1) A response to an investigation under Part 3 is *inadequate* if and only if:
- (a) the report of the investigation sets out recommendations that action be taken; and
 - (b) a reasonable period has passed since the preparation of the report; and
 - (c) either:
 - (i) no reasonable person would consider that the action that has been, is being, or is to be, taken in response to the recommendations is adequate; or
 - (ii) no action has been, is being, or is to be, taken in response to the recommendations.
- (2) However, a response to an investigation under Part 3 is taken, for the purposes of this Act, 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.

39 When responses to other disclosure investigations are inadequate

- (1) A response to a disclosure investigation that is not an investigation under Part 3 is *inadequate* if and only if no reasonable person would consider that the action that has been, is being, or is to be, taken in response to the investigation is adequate.
- (2) However, a response to such an investigation is taken, for the purposes of this Act, 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.

1 **Subdivision E—Miscellaneous**

2 **40 Meaning of *designated publication restriction***

3 Each of the following is a ***designated publication restriction***:

- 4 (a) section 121 of the *Family Law Act 1975*;
- 5 (b) section 91X of the *Migration Act 1958*;
- 6 (c) section 110X of the *Child Support (Registration and*
7 *Collection) Act 1988*;
- 8 (d) a non-publication order (within the meaning of Part XAA of
9 the *Judiciary Act 1903*) of any court;
- 10 (e) a suppression order (within the meaning of Part XAA of the
11 *Judiciary Act 1903*) of any court;
- 12 (f) an order under section 31 or 38L of the *National Security*
13 *Information (Criminal and Civil Proceedings) Act 2004*;
- 14 (g) an order under section 28 of the *Witness Protection Act 1994*;
- 15 (h) an order under subsection 35(2) of the *Administrative*
16 *Appeals Tribunal Act 1975*;
- 17 (i) a direction under section 35AA of the *Administrative Appeals*
18 *Tribunal Act 1975*;
- 19 (j) a direction under subsection 25A(9) of the *Australian Crime*
20 *Commission Act 2002*;
- 21 (k) section 29B of the *Australian Crime Commission Act 2002*;
- 22 (l) a direction under section 90 of the *Law Enforcement Integrity*
23 *Commissioner Act 2006*;
- 24 (m) section 92 of the *Law Enforcement Integrity Commissioner*
25 *Act 2006*.

26 **41 Meaning of *intelligence information***

27 (1) Each of the following is ***intelligence information***:

- 28 (a) information that has originated with, or has been received
29 from, an intelligence agency;
- 30 (b) information that is about, or that might reveal:
 - 31 (i) a source of information referred to in paragraph (a); or
 - 32 (ii) the technologies or methods used, proposed to be used,
33 or being developed for use, by an intelligence agency to

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- 1 collect, analyse, secure or otherwise deal with,
2 information referred to in paragraph (a); or
3 (iii) operations that have been, are being, or are proposed to
4 be, undertaken by an intelligence agency;
5 (c) information:
6 (i) that has been received by a public official from an
7 authority of a foreign government, being an authority
8 that has functions similar to the functions of an
9 intelligence agency; and
10 (ii) that is about, or that might reveal, a matter
11 communicated by that authority in confidence;
12 (d) information that has originated with, or has been received
13 from, the Defence Department and that is about, or that might
14 reveal:
15 (i) the collection, reporting, or analysis of operational
16 intelligence; or
17 (ii) a program under which a foreign government provides
18 restricted access to technology;
19 (e) information that includes a summary of, or an extract from,
20 information referred to in paragraph (a), (b), (c) or (d);
21 (f) information:
22 (i) that identifies a person as being, or having been, an
23 agent or member of the staff (however described) of the
24 Australian Secret Intelligence Service or the Australian
25 Security Intelligence Organisation (other than a person
26 referred to in subsection (3)); or
27 (ii) from which the identity of a person who is, or has been,
28 such an agent or member of staff (however described)
29 could reasonably be inferred; or
30 (iii) that could reasonably lead to the identity of such an
31 agent or member of staff (however described) being
32 established;
33 (g) sensitive law enforcement information.
34 (2) ***Sensitive law enforcement information*** means information the
35 disclosure of which is reasonably likely to prejudice Australia's
36 law enforcement interests, including Australia's interests in the
37 following:
-

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- 1 (a) avoiding disruption to national and international efforts
2 relating to law enforcement, criminal intelligence, criminal
3 investigation, foreign intelligence, security intelligence or the
4 integrity of law enforcement agencies;
5 (b) protecting the technologies and methods used to collect,
6 analyse, secure or otherwise deal with, criminal intelligence,
7 foreign intelligence, security intelligence or intelligence
8 relating to the integrity of law enforcement agencies;
9 (c) the protection and safety of:
10 (i) informants or witnesses, or persons associated with
11 informants or witnesses; or
12 (ii) persons involved in the protection and safety of
13 informants or witnesses;
14 (d) ensuring that intelligence and law enforcement agencies are
15 not discouraged from giving information to a nation's
16 government and government agencies.
- 17 (3) Paragraph (1)(f) does not apply to:
18 (a) the Director-General of ASIS, or a person who has been
19 determined by the Director-General of ASIS under this
20 paragraph; or
21 (b) the Director-General of Security, or a person who has been
22 determined by the Director-General of Security under this
23 paragraph.

Section 42

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, he or she allocates the handling of the disclosure to one or more agencies.

Note: 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.

43 Authorised officer to allocate the handling of the disclosure

- (1) If a person (the *discloser*) discloses information to an authorised officer of an agency (the *recipient agency*), the authorised officer must allocate the handling of the disclosure to one or more agencies (which may be or include the recipient agency).

Note: For the assistance that authorised officers must give to disclosers, see section 60.

- (2) However, subsection (1) does not apply if the authorised officer is satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered to be an internal disclosure.

Note: The requirements for an internal disclosure are set out in item 1 of the table in subsection 26(1).

- (3) In deciding the allocation, the authorised officer must have regard to:

- (a) the principle that an agency should not handle the disclosure unless any of the following apply:
- (i) in any case—some or all of the disclosable conduct with which the information may be concerned (*suspected disclosable conduct*) relates to the agency;

- 1 (ii) if the agency is the Ombudsman—some or all of the
2 suspected disclosable conduct relates to an agency other
3 than an intelligence agency or the IGIS;
4 (iii) if the agency is the IGIS—some or all of the suspected
5 disclosable conduct relates to an intelligence agency;
6 (iv) if the agency is an investigative agency (other than the
7 Ombudsman or the IGIS)—the investigative agency has
8 power to investigate the disclosure otherwise than under
9 this Act; and
10 (b) such other matters (if any) as the authorised officer considers
11 relevant.
- 12 (4) For the purposes of deciding the allocation, the authorised officer
13 may obtain information from such persons, and make such
14 inquiries, as the authorised officer thinks fit.
- 15 (5) The authorised officer must use his or her best endeavours to
16 decide the allocation within 14 days after the disclosure is made to
17 the authorised officer.
- 18 (6) The authorised officer must not allocate the disclosure to an agency
19 (other than the recipient agency) unless an authorised officer of
20 that agency has consented to the allocation.

21 **44 Giving notice of the allocation decision**

- 22 (1) The authorised officer must inform the principal officer of each
23 agency to which the handling of the disclosure is allocated of:
24 (a) the allocation to the agency; and
25 (b) the information that was disclosed; and
26 (c) the suspected disclosable conduct (if any); and
27 (d) if the discloser's name and contact details are known to the
28 authorised officer—the discloser's name and contact details.
- 29 (2) The authorised officer must inform the discloser of the allocation if
30 the discloser is readily contactable.
- 31 (3) If, because of subsection 43(2), the authorised officer does not
32 allocate the disclosure, the authorised officer must, if the discloser
33 is readily contactable, inform the discloser of:

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Division 1 Allocating the handling of disclosures

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- 1 (a) the reasons why the disclosure has not been allocated to an
2 agency; and
3 (b) any other courses of action that might be available to the
4 discloser under other laws of the Commonwealth.

5 **45 Subsequent allocations**

- 6 (1) The authorised officer may, after making a decision under
7 section 43 or this section (the *original decision*) allocating the
8 handling of the disclosure to one or more agencies, decide to
9 allocate the handling of the disclosure to one or more other
10 agencies.
11 (2) Subsections 43(3) to (6) and section 44 apply in relation to a
12 decision under this section in the same way that they apply in
13 relation to the original decision.

1 **Division 2—The obligation to investigate disclosures**

2 **46 Simplified outline**

3 The following is a simplified outline of this Division:

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

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

11 **47 Principal officer must investigate disclosures**

- 12 (1) The principal officer of an agency must investigate a disclosure if
13 the handling of the disclosure is allocated to the agency under
14 Division 1.
- 15 (2) **Investigate**, in relation to a disclosure, means investigate (or
16 reinvestigate) whether there are one or more instances of
17 disclosable conduct. The disclosable conduct may relate to:
18 (a) the information that is disclosed; or
19 (b) information obtained in the course of the investigation.
- 20 (3) For the purposes of subsection (2), an investigation (or
21 reinvestigation) may include consideration of whether a different
22 investigation (or reinvestigation) should be conducted:
23 (a) by the agency; or
24 (b) by another body;
25 under another law of the Commonwealth.
- 26 (4) For the purposes of subsection (3), procedures established under a
27 law of the Commonwealth (other than this Act) are taken to be a
28 law of the Commonwealth.

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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
 - (b) the information that is disclosed does not tend to show any instance of disclosable conduct; or
 - (c) the information does not, to any extent, concern serious disclosable conduct; or
 - (d) the disclosure is frivolous, vexatious, misconceived or lacking in substance; or
 - (e) the information is the same, or substantially the same, as information the disclosure of which has been, or is being, investigated as a disclosure investigation; or
 - (f) the information concerns disclosable conduct that is the same, or substantially the same, as disclosable conduct that is being investigated under:
 - (i) a law of the Commonwealth other than this Act; or
 - (ii) the executive power of the Commonwealth;and it would be inappropriate to conduct another investigation at the same time; or
 - (g) the information concerns disclosable conduct that is the same, or substantially the same, as disclosable conduct that has been investigated under:
 - (i) a law of the Commonwealth other than this Act; or
 - (ii) the executive power of the Commonwealth;and the principal officer is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation; or
 - (h) the discloser has informed the principal officer of an agency that the discloser does not wish the investigation of the internal disclosure to be pursued, and the principal officer is reasonably satisfied 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 has not disclosed his or her name and contact details; or

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- 1 (ii) because the discloser refuses or fails, or is unable, to
2 give, for the purposes of the investigation, such
3 information or assistance as the person who is or will be
4 conducting the investigation asks the discloser to give;
5 or
6 (iii) because of the age of the information.
- 7 (2) If the principal officer decides not to investigate the disclosure, or
8 not to investigate it further, this Act does not, by implication,
9 prevent the information from being investigated otherwise than
10 under this Act.
- 11 (3) For the purposes of subparagraph (1)(f)(i) or (g)(i), procedures
12 established under a law of the Commonwealth (other than this Act)
13 are taken to be a law of the Commonwealth.

14 **49 Investigative agency using separate investigative powers**

- 15 (1) Despite section 47, if the agency is an investigative agency that has
16 a separate investigative power in relation to the disclosure, the
17 principal officer of the agency may decide:
18 (a) to investigate the disclosure under that separate investigative
19 power; and
20 (b) not to investigate the disclosure, or (if the investigation has
21 started) not to investigate the disclosure further, under this
22 Act.
- 23 (2) A ***separate investigative power***, in relation to the disclosure, is a
24 power that an investigative agency has, otherwise than under this
25 Act, to investigate the disclosure.
- 26 Note 1: Under the *Ombudsman Act 1976*, the Ombudsman has power to
27 investigate a disclosure allocated to the Ombudsman.
- 28 Note 2: Under the *Inspector-General of Intelligence and Security Act 1986*,
29 the IGIS has power to investigate a disclosure allocated to the IGIS.
- 30 (3) On completing its investigation of the disclosure under its separate
31 investigative power, the investigative agency must inform:
32 (a) the principal officers of each of the agencies to which any of
33 the suspected disclosable conduct relates; and
34 (b) if the discloser is readily contactable—the discloser;

Section 50

1 that the investigation is complete.

2 **50 Notification to discloser**

- 3 (1) If the discloser is readily contactable, the principal officer of the
4 agency must inform the discloser of the following (whichever is
5 applicable):
- 6 (a) that the principal officer is required to investigate the
7 disclosure;
- 8 (b) that the principal officer has decided under section 48 or 49
9 not to investigate the disclosure under this Division, or not to
10 investigate the disclosure further.
- 11 (2) If paragraph (1)(b) applies, the principal officer must inform the
12 discloser of:
- 13 (a) the reasons for the decision; and
- 14 (b) other courses of action that might be available to the
15 discloser under other laws of the Commonwealth.
- 16 (3) Despite paragraph (2)(a), the principal officer may delete from the
17 reasons given to the discloser any reasons that would, if contained
18 in a document, cause the document:
- 19 (a) to be exempt for the purposes of Part IV of the *Freedom of*
20 *Information Act 1982*; or
- 21 (b) to have, or be required to have, a national security or other
22 protective security classification; or
- 23 (c) to contain intelligence information.
- 24 (4) The discloser may be informed of a matter under this section in the
25 same document as the discloser is informed of a matter under
26 subsection 44(2).

27 **51 Report of investigation**

- 28 (1) On completing an investigation under this Division, the principal
29 officer of the agency must prepare a report of the investigation.
- 30 (2) The report must set out:
- 31 (a) the matters considered in the course of the investigation; and
- 32 (b) the duration of the investigation; and

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- 1 (c) the principal officer's findings (if any); and
2 (d) the action (if any) that has been, is being, or is recommended
3 to be, taken; and
4 (e) any claims made about, and any evidence of, detrimental
5 action taken against the discloser, and the agency's response
6 to those claims and that evidence.

7 Note 1: For the purposes of paragraph (d), the report might include, for
8 example, a recommendation that an investigation be conducted, under
9 procedures established under subsection 15(3) of the *Public Service*
10 *Act 1999*, into whether an APS employee has breached the Code of
11 Conduct under that Act.

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

- 13 (3) In preparing the report, the principal officer must comply with any
14 standards in force under section 74.
- 15 (4) If the discloser is readily contactable, the principal officer must,
16 within a reasonable time after preparing the report, give a copy of
17 the report under subsection (2) to the discloser.
- 18 (5) However, the principal officer may delete from the copy given to
19 the discloser any material:
- 20 (a) that is likely to enable the identification of the discloser or
21 another person; or
22 (b) the inclusion of which would:
- 23 (i) result in the copy being a document that is exempt for
24 the purposes of Part IV of the *Freedom of Information*
25 *Act 1982*; or
26 (ii) result in the copy being a document having, or being
27 required to have, a national security or other protective
28 security classification; or
29 (iii) result in the copy containing intelligence information.

30 **52 Time limit for investigations under this Division**

- 31 (1) An investigation under this Division must be completed within 90
32 days after the relevant disclosure was allocated to the agency
33 concerned.

Part 3 Investigations

Division 2 The obligation to investigate disclosures

Section 53

- 1 (2) The investigation is *completed* when the principal officer has
2 prepared the report of the investigation.
- 3 (3) If the agency is not the IGIS or an intelligence agency, the
4 Ombudsman may extend, or further extend, the 90-day period by
5 such additional period (which may exceed 90 days) as the
6 Ombudsman considers appropriate:
7 (a) on the Ombudsman's own initiative; or
8 (b) if the agency is not the Ombudsman—on application made
9 by the principal officer of the agency; or
10 (c) on application made by the discloser.
- 11 (4) If the agency is the IGIS or an intelligence agency, the IGIS may
12 extend, or further extend, the 90-day period by such additional
13 period (which may exceed 90 days) as the IGIS considers
14 appropriate:
15 (a) on the IGIS's own initiative; or
16 (b) if the agency is not the IGIS—on application made by the
17 principal officer of the agency; or
18 (c) on application made by the discloser.
- 19 (5) If the 90-day period is extended, or further extended, the
20 Ombudsman or the IGIS, as the case may be, must inform the
21 discloser of the extension or further extension if the discloser is
22 readily contactable.
- 23 (6) Failure to complete the investigation within the time limit under
24 this section does not affect the validity of the investigation.

25 **53 Conduct of investigations under this Division**

- 26 (1) An investigation under this Division by the principal officer of an
27 agency is to be conducted as the person thinks fit.
- 28 (2) The principal officer may, for the purposes of the investigation,
29 obtain information from such persons, and make such inquiries, as
30 the principal officer thinks fit.
- 31 (3) Despite subsections (1) and (2), in conducting the investigation, the
32 principal officer must comply with any standards in force under
33 section 74.
-

- 1 (4) Despite subsections (1) and (2), the principal officer must act in
2 accordance with the Commonwealth Fraud Control Guidelines in
3 force under regulations made for the purposes of section 64 of the
4 *Financial Management and Accountability Act 1997*, to the extent
5 that:
6 (a) the investigation relates to one or more instances of fraud
7 against the Commonwealth (within the meaning of those
8 Guidelines); and
9 (b) those Guidelines are not inconsistent with this Act (apart
10 from subsections (1) and (2)).
- 11 (5) Despite subsections (1) and (2):
12 (a) to the extent that the investigation relates to an alleged breach
13 of the Code of Conduct (within the meaning of the
14 *Parliamentary Service Act 1999*), the principal officer must
15 comply with the procedures established under
16 subsection 15(3) of that Act; and
17 (b) to the extent that the investigation relates to an alleged breach
18 of the Code of Conduct (within the meaning of the *Public*
19 *Service Act 1999*), the principal officer must comply with the
20 procedures established under subsection 15(3) of that Act.

21 **54 Adoption of findings of another investigation**

- 22 (1) The principal officer conducting an investigation under this
23 Division may, for the purposes of the investigation, adopt a finding
24 set out in the report of:
25 (a) an investigation or inquiry under:
26 (i) a law of the Commonwealth other than this Act; or
27 (ii) the executive power of the Commonwealth; or
28 (b) another investigation under this Part;
29 conducted by the principal officer or any other person.
- 30 (2) For the purposes of subparagraph (1)(a)(i), procedures established
31 under a law of the Commonwealth (other than this Act) are taken
32 to be a law of the Commonwealth.

Part 3 Investigations

Division 2 The obligation to investigate disclosures

Section 55

1 **55 Estimate of duration of investigation**

2 As soon as practicable after starting an investigation under this
3 Division, the principal officer conducting the investigation must
4 provide an initial estimate of its likely duration to the discloser of
5 the information to which the investigation relates, if the discloser is
6 readily contactable.

Division 3—Miscellaneous

56 Disclosure to a member of an Australian police force

- (1) If, in the course of a disclosure investigation relating to a disclosure, the person conducting the investigation suspects on reasonable grounds that some or all of:
- (a) the information disclosed, or
 - (b) any other information obtained in the course of the investigation;
- is evidence of the commission of an offence against a law of the Commonwealth, a State or a Territory, the person may disclose the information, to the extent that it is such evidence, to a member of an Australian police force that is responsible for the investigation of the offence.
- (2) However, if the offence is punishable by imprisonment for life or by imprisonment for a period of at least 2 years, the person must so notify such a member.
- (3) This section does not, by implication, limit a person's power to notify a matter to a member of an Australian police force.

57 Protection of witnesses etc.

- (1) A person is not subject to any criminal or civil liability because the person (voluntarily or otherwise) gives information, produces a document or answers a question if:
- (a) the person does so when requested to do so by a person conducting a disclosure investigation; and
 - (b) the information, document or answer is relevant to the investigation.

Note: The first person may be the person whose disclosure gave rise to the disclosure investigation.

- (2) This section does not apply to liability for an offence against section 137.1, 137.2, 144.1 or 145.1 of the *Criminal Code* that relates to the information, document or answer, as the case may be.

Section 57

- 1 (3) This section does not apply to proceedings for a breach of a
2 designated publication restriction.
- 3 Note: For *designated publication restriction*, see section 40.
- 4 (4) To avoid doubt, if the information, document or answer relates to
5 the person's own conduct, this section does not affect his or her
6 liability for the conduct.

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 and public officials, and by conferring additional functions on the Ombudsman and the IGIS.

59 Additional obligations of principal officers

- (1) The principal officer of an agency must establish procedures for facilitating and dealing with public interest disclosures relating to the agency. The procedures must include:
 - (a) assessing risks that reprisals may be taken against the persons who make those disclosures; and
 - (b) providing for confidentiality of investigative processes.The procedures must comply with the standards made under paragraph 74(1)(a).
- (2) Procedures established under subsection (1) are not legislative instruments.
- (3) The principal officer of an agency must take reasonable steps:
 - (a) to protect public officials who belong to the agency from detriment, or threats of detriment, relating to public interest disclosures by those public officials; and
 - (b) to ensure that 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
 - (c) to ensure that public officials who belong to the agency are aware of the identity of each authorised officer of the agency.

Section 60

- 1 (4) The principal officer of an agency must ensure that appropriate
2 action is taken in response to recommendations in a report under
3 section 51, or any other matters raised in such a report, that relate
4 to the agency.

5 **60 Additional obligations of authorised officers**

- 6 If:
- 7 (a) an individual discloses, or proposes to disclose, information
8 to an authorised officer of an agency; and
- 9 (b) the authorised officer has reasonable grounds to believe that:
- 10 (i) the information concerns, or could concern, disclosable
11 conduct; and
- 12 (ii) the individual may be unaware of what this Act requires
13 in order for the disclosure to be an internal disclosure;
- 14 the authorised officer must:
- 15 (c) inform the individual that the disclosure could be treated as
16 an internal disclosure for the purposes of this Act; and
- 17 (d) explain what this Act requires in order for the disclosure to
18 be an internal disclosure; and
- 19 (e) advise the individual of any orders or directions of which the
20 authorised officer is aware that are designated publication
21 restrictions that may affect disclosure of the information.

22 **61 Additional obligations of public officials**

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

1 **62 Additional functions of the Ombudsman**

2 The functions of the Ombudsman include:

- 3 (a) assisting:
- 4 (i) principal officers of agencies (other than intelligence
- 5 agencies or the IGIS); and
- 6 (ii) authorised officers of agencies (other than intelligence
- 7 agencies or the IGIS); and
- 8 (iii) public officials who belong to agencies (other than
- 9 intelligence agencies or the IGIS); and
- 10 (iv) former public officials who belonged to agencies (other
- 11 than intelligence agencies or the IGIS);
- 12 in relation to the operation of this Act; and
- 13 (b) conducting educational and awareness programs relating to
- 14 this Act, to the extent to which this Act relates to:
- 15 (i) agencies (other than intelligence agencies or the IGIS);
- 16 and
- 17 (ii) public officials who belong to agencies (other than
- 18 intelligence agencies or the IGIS); and
- 19 (iii) former public officials who belonged to agencies (other
- 20 than intelligence agencies or the IGIS); and
- 21 (c) assisting the IGIS in relation to the performance of the
- 22 functions conferred on the IGIS by this Act.

23 Note: Section 5A of the *Ombudsman Act 1976* extends the Ombudsman's

24 functions to cover disclosures of information that have been, or are

25 required to be, allocated under section 43 of this Act (whether or not

26 they are allocated to the Ombudsman), if the disclosable conduct with

27 which the information is concerned relates to an agency other than an

28 intelligence agency or the IGIS.

29 **63 Additional functions of the IGIS**

30 The functions of the IGIS include:

- 31 (a) assisting:
- 32 (i) principal officers of intelligence agencies; and
- 33 (ii) authorised officers of intelligence agencies or the IGIS;
- 34 and
- 35 (iii) public officials who belong to intelligence agencies or
- 36 the IGIS; and

Part 4 Administrative matters

Division 1 Additional obligations and functions

Section 63

- 1 (iv) former public officials who belonged to intelligence
2 agencies or the IGIS;
3 in relation to the operation of this Act; and
4 (b) conducting educational and awareness programs relating to
5 this Act, to the extent to which this Act relates to:
6 (i) intelligence agencies; and
7 (ii) public officials who belong to intelligence agencies; and
8 (iii) former public officials who belonged to intelligence
9 agencies; and
10 (c) assisting the Ombudsman in relation to the performance of
11 the functions conferred on the Ombudsman by this Act.
- 12 Note: Section 8A of the *Inspector-General of Intelligence and Security Act*
13 *1986* extends the IGIS's functions to cover disclosures of information
14 allocated under section 43 of this Act (whether or not they are
15 allocated to the IGIS), if the disclosable conduct with which the
16 information is concerned relates to an intelligence agency.

1 **Division 2—Treatment of information**

2 **64 Simplified outline**

3 The following is a simplified outline of this Division:

4 This Division creates offences relating to the inappropriate use or
5 disclosure of information obtained through processes connected
6 with this Act.

7 **65 Secrecy—general**

8 (1) A person commits an offence if:

9 (a) the person has information (*protected information*) that the
10 person obtained:

- 11 (i) in the course of conducting a disclosure investigation; or
12 (ii) in connection with the performance of a function, or the
13 exercise of a power, by the person under this Act; and

14 (b) the person:

- 15 (i) discloses the information to another person; or
16 (ii) uses the information.

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

18 (2) Subsection (1) does not apply if:

19 (a) the disclosure or use is for the purposes of this Act or another
20 law of the Commonwealth; or

21 (b) the disclosure or use is for the purposes of, or in connection
22 with, the performance of a function, or the exercise of a
23 power, of the person under this Act or another law of the
24 Commonwealth; or

25 (c) the disclosure or use is for the purposes of, or in connection
26 with, the exercise of the executive power of the
27 Commonwealth; or

28 (d) the disclosure or use is in connection with giving another
29 person (the *second person*) access to information for the
30 purposes of, or in connection with:

Section 66

- 1 (i) the performance of a function, or the exercise of a
2 power, of the second person under this Act or another
3 law of the Commonwealth; or
4 (ii) the exercise of the executive power of the
5 Commonwealth; or
6 (e) the protected information has previously been lawfully
7 published, and is not intelligence information; or
8 (f) the protected information is intelligence information that has
9 previously been lawfully published, and the disclosure or use
10 occurs with the consent of the principal officer of the agency
11 referred to in section 66 as the source agency for the
12 intelligence information.
- 13 Note: A defendant bears an evidential burden in relation to a matter in
14 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- 15 (3) Except where it is necessary to do so for the purposes of giving
16 effect to this Act or another law of the Commonwealth, a person is
17 not to be required:
18 (a) to produce to a court or tribunal a document containing
19 protected information; or
20 (b) to disclose protected information to a court or tribunal.
- 21 (4) For the purposes of this section, procedures established under a law
22 of the Commonwealth (other than this Act) are taken to be a law of
23 the Commonwealth.

24 **66 Source agencies for intelligence information**

25 For the purposes of paragraph 65(2)(f), if the information referred
26 to in that paragraph is intelligence information because of a
27 provision referred to in column 1 of an item of the following table,
28 the source agency for the intelligence information is the agency set
29 out in column 2 of that item:
30

Section 67

Source agencies for particular kinds of intelligence information

Item	Column 1 Provision in the definition of <i>intelligence information</i>	Column 2 Source agency for the intelligence information
1	Paragraph 41(1)(a)	The intelligence agency with which the information originated, or from which it was received.
2	Subparagraph 41(1)(b)(i)	The intelligence agency that is, under item 1 of this table, the source agency for the information referred to in that subparagraph.
3	Subparagraph 41(1)(b)(ii) or (iii)	The intelligence agency referred to in that subparagraph in relation to the information.
4	Paragraph 41(1)(c)	The agency to which the public official referred to in that paragraph belongs.
5	Paragraph 41(1)(d)	The Defence Department.
6	Paragraph 41(1)(e)	The agency that is, under item 1, 2, 3, 4 or 5 of this table, the source agency for the information to which that paragraph applies.
7	Paragraph 41(1)(f)	The agency to which the agent or member of the staff referred to in that paragraph belongs.
8	Paragraph 41(1)(g)	The agency with which the information originated, or from which it was received.

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

(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.

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- 1 (2) Subsection (1) does not apply if:
- 2 (a) the disclosure or use is for the purpose of providing legal
- 3 advice, or professional assistance, relating to a public interest
- 4 disclosure (other than a legal practitioner disclosure) made,
- 5 or proposed to be made, by the person who made the legal
- 6 practitioner disclosure referred to in paragraph (1)(a); or
- 7 (b) the information has previously been lawfully published.
- 8 Note: A defendant bears an evidential burden in relation to a matter in
- 9 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.

Public officials and the agencies to which they belong		
Item	Column 1 Public official	Column 2 Agency to which the public official belongs
1	A Secretary of a Department.	The Department.
2	An APS employee in a Department.	The Department.
3	A Head of an Executive Agency.	The Executive Agency.
4	An APS employee in an Executive Agency.	The Executive Agency.
5	A principal officer of a prescribed authority.	The prescribed authority.
6	A member of the staff of a prescribed authority (including an APS employee in the prescribed authority).	The prescribed authority.
7	An individual who constitutes a prescribed authority.	The prescribed authority.

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Public officials and the agencies to which they belong		
Item	Column 1 Public official	Column 2 Agency to which the public official belongs
8	A member of a prescribed authority (other than a court).	The prescribed authority.
9	A director of a Commonwealth company.	The Commonwealth company.
10	A member of the Defence Force.	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 a Department, Executive Agency or prescribed authority.	The Department, Executive Agency or prescribed authority.
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.
15	An individual who is a contracted service provider for a Commonwealth contract.	Whichever of the following agencies is applicable:

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Public officials and the agencies to which they belong		
Item	Column 1 Public official	Column 2 Agency to which the public official belongs
		<p>(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;</p> <p>(b) otherwise—the agency ascertained in accordance with the PID rules.</p>
16	<p>An individual who:</p> <p>(a) is an officer or employee of a contracted service provider for a Commonwealth contract; and</p> <p>(b) provides services for the purposes (whether direct or indirect) of the Commonwealth contract.</p>	<p>Whichever of the following agencies is applicable:</p> <p>(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;</p> <p>(b) otherwise—the agency ascertained in accordance with the PID rules.</p>
17	<p>An individual (other than a statutory officeholder, a judicial officer 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:</p> <p>(a) the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>; or</p> <p>(b) the <i>Australian Capital Territory (Self-Government) Act 1988</i>; or</p> <p>(c) the <i>Corporations Act 2001</i>; or</p> <p>(d) the <i>Norfolk Island Act 1979</i>; or</p>	<p>The Department administered by the Minister administering that law.</p>

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Public officials and the agencies to which they belong		
Item	Column 1 Public official	Column 2 Agency to which the public official belongs
	(e) the <i>Northern Territory (Self-Government) Act 1978</i> ; or (f) a provision prescribed by the PID rules.	
18	An individual (other than a judicial officer) 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 (other than a judicial officer) 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 Corporations.	The Department administered by the Minister administering the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> .

- 1 (2) A **statutory officeholder** means an individual (other than a judicial
2 officer or an official of a registered industrial organisation) who
3 holds or performs the duties of an office established by or under a
4 law of the Commonwealth, other than:
5 (a) the *Corporations (Aboriginal and Torres Strait Islander) Act*
6 *2006*; or
7 (b) the *Australian Capital Territory (Self-Government) Act 1988*;
8 or
9 (c) the *Corporations Act 2001*; or
10 (d) the *Norfolk Island Act 1979* (except section 51D of that Act);
11 or

- 1 (e) the *Northern Territory (Self-Government) Act 1978*.
- 2 (3) For the purposes of item 6 of the table in subsection (1):
- 3 (a) a person who is a member of the staff referred to in
- 4 subsection 31(1) of the *Ombudsman Act 1976* is taken to be a
- 5 member of the staff of the Ombudsman; and
- 6 (b) a person who is a member of the staff referred to in
- 7 subsection 32(1) of the *Inspector-General of Intelligence and*
- 8 *Security Act 1986* is taken to be a member of the staff of the
- 9 IGIS; and
- 10 (c) a staff member of the Australian Commission for Law
- 11 Enforcement Integrity is taken to be a member of the staff of
- 12 the Integrity Commissioner.
- 13 (4) To avoid doubt, a judicial officer, or a member of a Royal
- 14 Commission, is not a **public official** for the purposes of this Act.

15 **70 Individuals taken to be public officials**

- 16 (1) If:
- 17 (a) an authorised officer of an agency believes, on reasonable
- 18 grounds, that an individual has information that concerns
- 19 disclosable conduct; and
- 20 (b) apart from this subsection, the individual was not a public
- 21 official when the individual obtained the information; and
- 22 (c) the individual has disclosed, or proposes to disclose, the
- 23 information to the authorised officer;
- 24 the authorised officer may, by written notice given to the
- 25 individual, determine that this Act has effect, and is taken always
- 26 to have had effect, in relation to the disclosure of the information
- 27 by the individual, as if the individual had been a public official
- 28 when the person obtained the information.
- 29 (2) The authorised officer may make the determination:
- 30 (a) on a request being made to the authorised officer by the
- 31 individual; or
- 32 (b) on the authorised officer's own initiative.

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- (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.
- (4) A determination under this section is not a legislative instrument.

Subdivision B—Agencies and prescribed authorities

71 Meaning of *agency*

For the purposes of this Act, ***agency*** means:

- (a) a Department; or
- (b) an Executive Agency; or
- (c) a prescribed authority.

72 Meaning of *prescribed authority*

Prescribed authorities

- (1) For the purposes of this Act, ***prescribed authority*** means:
- (a) a Statutory Agency; or
 - (b) a Commonwealth authority (within the meaning of the *Commonwealth Authorities and Companies Act 1997*); or
 - (c) a Commonwealth company; or
 - (d) the Australian Federal Police; or
 - (e) the Australian Security Intelligence Organisation; or
 - (f) the Australian Secret Intelligence Service; or
 - (g) the Defence Imagery and Geospatial Organisation; or
 - (h) the Defence Intelligence Organisation; or
 - (i) the Defence Signals Directorate; or
 - (j) the Office of National Assessments; or
 - (k) the Australian Prudential Regulation Authority; or
 - (l) the High Court or any court created by the Parliament; or

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- 1 (m) the Office of Official Secretary to the Governor-General; or
2 (n) the Ombudsman; or
3 (o) the IGIS; or
4 (p) any body that:
5 (i) is established by a law of the Commonwealth; and
6 (ii) is prescribed by the PID rules; or
7 (q) subject to subsection (2), the person holding, or performing
8 the duties of, an office that:
9 (i) is established by a law of the Commonwealth; and
10 (ii) is prescribed by the PID rules.

11 *Exceptions*

- 12 (2) For the purposes of this Act, a person is not a prescribed authority
13 because he or she holds, or performs the duties of:
14 (a) an office the duties of which he or she performs as duties of
15 his or her employment as an officer of a Department or as an
16 officer of or under a prescribed authority; or
17 (b) an office of member of a body; or
18 (c) an office established by a law of the Commonwealth for the
19 purposes of a prescribed authority.
20 (3) For the purposes of this Act, a Royal Commission is not a
21 prescribed authority.

22 *Intelligence agencies*

- 23 (4) For the purposes of this Act, each of the following is taken to be a
24 prescribed authority in its own right, and not to be part of the
25 Defence Department:
26 (a) the Defence Imagery and Geospatial Organisation;
27 (b) the Defence Intelligence Organisation;
28 (c) the Defence Signals Directorate.

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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.
2	An Executive Agency.	The Head of the Executive Agency.
3	A prescribed authority of a kind mentioned in paragraph 72(1)(a), (b), (c), (e), (f), (g), (h), (i), (j), (k) or (p).	Whichever of the following individuals is applicable: (a) the chief executive officer (however described) of the prescribed authority; (b) if another individual is ascertained in accordance with the PID rules—that other individual.
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.

- (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

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- 1 (b) the Registrar of the Federal Court is the *chief executive*
2 *officer* of the Federal Court; and
3 (c) the Chief Executive Officer of the Family Court of Australia
4 and the Federal Circuit Court is:
5 (i) the *chief executive officer* of the Family Court of
6 Australia; and
7 (ii) the *chief executive officer* of the Federal Circuit Court;
8 and
9 (d) the PID rules may provide that the *chief executive officer* of
10 another specified court is the person holding, or performing
11 the duties of, a specified office; and
12 (e) the Registrar of the Administrative Appeals Tribunal is the
13 *chief executive officer* of the Administrative Appeals
14 Tribunal; and
15 (f) the PID rules may provide that the *chief executive officer* of
16 another specified tribunal is the person holding, or
17 performing the duties of, a specified office.

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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
 - (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

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1 exercise of the powers, conferred on the person by Part 3 or
 2 section 61;
 3 and the disclosure, recording or use is not contrary to a designated
 4 publication restriction.

5 Note: For *designated publication restriction*, see section 40.

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

10 **76 Annual report**

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

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

- 17 (2) The report must include:
 18 (a) in relation to each agency, statements of the following:
 19 (i) the number of public interest disclosures received by
 20 authorised officers of the agency during the financial
 21 year;
 22 (ii) the kinds of disclosable conduct to which those
 23 disclosures relate;
 24 (iii) the number of disclosure investigations that the
 25 principal officer of the agency conducted during the
 26 financial year;
 27 (iv) the actions that the principal officer of the agency has
 28 taken during the financial year in response to
 29 recommendations in reports relating to those disclosure
 30 investigations; and
 31 (b) a statement of the number and nature of the complaints made
 32 to the Ombudsman during the financial year about the
 33 conduct of agencies in relation to public interest disclosures;
 34 and

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- 1 (c) information about the Ombudsman's performance of its
2 functions under section 62; and
3 (d) information about the IGIS's performance of its functions
4 under section 63.
- 5 (3) The principal officer of an agency must give the Ombudsman such
6 information and assistance as the Ombudsman reasonably requires
7 in relation to the preparation of a report under this section.
- 8 (4) Despite subsection (3), the principal officer may delete from a
9 document given to the Ombudsman under that section any
10 material:
11 (a) that is likely to enable the identification of a person who has
12 made a public interest disclosure or another person; or
13 (b) the inclusion of which would:
14 (i) result in the document being a document that is exempt
15 for the purposes of Part IV of the *Freedom of*
16 *Information Act 1982*; or
17 (ii) result in the document being a document having, or
18 being required to have, a national security or other
19 protective security classification.
- 20 (5) A report under this section in relation to a financial year may be
21 included in a report under section 19 of the *Ombudsman Act 1976*
22 relating to the operations of the Ombudsman during that year.

77 Delegations

Principal officers

- 24 (1) The principal officer of an agency (other than the IGIS or the
25 Ombudsman) may, by writing, delegate any or all of his or her
26 functions or powers under this Act to a public official who belongs
27 to the agency.

Ombudsman

- 29 (2) The Ombudsman may, by writing, delegate any or all of his or her
30 functions or powers under this Act to:
31 (a) a Deputy Commonwealth Ombudsman; or
32

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- 1 (b) a member of staff mentioned in section 31 of the
2 *Ombudsman Act 1976*.

3 *IGIS*

- 4 (3) The IGIS may, by writing, delegate any or all of his or her
5 functions or powers under this Act to a member of staff mentioned
6 in section 32 of the *Inspector-General of Intelligence and Security*
7 *Act 1986*.

8 **78 Liability for acts and omissions**

- 9 (1) The principal officer of an agency or a delegate of the principal
10 officer, or an authorised officer of an agency, is not liable to any
11 criminal or civil proceedings, or any disciplinary action (including
12 any action that involves imposing any detriment), for or in relation
13 to an act or matter done, or omitted to be done, in good faith:
14 (a) in the performance, or purported performance, of any
15 function conferred on the person by this Act; or
16 (b) in the exercise, or purported exercise, of any power conferred
17 on the person by this Act.
- 18 (2) This section does not apply to a breach of a designated publication
19 restriction.
- 20 Note: For *designated publication restriction*, see section 40.
- 21 (3) This section does not affect any rights conferred by the
22 *Administrative Decisions (Judicial Review) Act 1977* to apply to a
23 court, or any other rights to seek a review by a court or tribunal, in
24 relation to:
25 (a) a decision; or
26 (b) conduct engaged in for the purpose of making a decision; or
27 (c) a failure to make a decision.
- 28 (4) An expression used in subsection (3) has the same meaning as in
29 section 10 of the *Administrative Decisions (Judicial Review) Act*
30 *1977*.

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1 **79 Concurrent operation of State and Territory laws**

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

5 **80 Law relating to legal professional privilege not affected**

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

8 **81 Law relating to parliamentary privilege not affected**

- 9 (1) This Act does not affect the powers, privileges and immunities of:
10 (a) the Senate; and
11 (b) the House of Representatives; and
12 (c) the members of each House of the Parliament; and
13 (d) the committees of each House of the Parliament;
14 under section 49 of the Constitution.
- 15 (2) This Act does not affect the powers, privileges and immunities
16 conferred by, or arising under, the *Parliamentary Privileges Act*
17 1987.

18 **82 Other investigative powers etc. not affected**

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

25 **83 The PID rules**

26 The Minister may, by legislative instrument, make rules
27 prescribing matters:
28 (a) required or permitted by this Act to be prescribed; or

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- 1 (b) necessary or convenient to be prescribed for carrying out or
2 giving effect to this Act.