



Public Interest Disclosure (Consequential Amendments) Act 2013

No. 134, 2013

An Act to deal with consequential matters arising from the enactment of the *Public Interest Disclosure Act 2013*, and for other purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
Schedule 1—Amendments		4
	<i>Australian Law Reform Commission Act 1996</i>	4
	<i>Inspector-General of Intelligence and Security Act 1986</i>	4
	<i>Ombudsman Act 1976</i>	5
	<i>Parliamentary Service Act 1999</i>	9
	<i>Public Service Act 1999</i>	10
Schedule 2—Transitional provisions		11



Public Interest Disclosure (Consequential Amendments) Act 2013

No. 134, 2013

An Act to deal with consequential matters arising from the enactment of the *Public Interest Disclosure Act 2013*, and for other purposes

[Assented to 15 July 2013]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Public Interest Disclosure (Consequential Amendments) Act 2013*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	15 July 2013
2. Schedule 1, item 1	The later of: (a) immediately after the commencement of Schedule 1 to the <i>Public Service Amendment Act 2013</i> ; and (b) the commencement of section 3 of the <i>Public Interest Disclosure Act 2013</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	15 January 2014 (paragraph (b) applies)
3. Schedule 1, items 2 to 17	At the same time as section 3 of the <i>Public Interest Disclosure Act 2013</i> commences.	15 January 2014
4. Schedule 1, items 18 to 21	The later of: (a) immediately after the commencement of Parts 1 to 11 of Schedule 1 to the <i>Parliamentary Service Amendment Act 2013</i> ; and (b) the commencement of section 3 of the <i>Public Interest Disclosure Act 2013</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	15 January 2014 (paragraph (b) applies)
5. Schedule 1, items 22 to 25	The later of: (a) immediately after the commencement of Schedule 1 to the <i>Public Service Amendment Act 2013</i> ; and	15 January 2014 (paragraph (b) applies)

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	(b) the commencement of section 3 of the <i>Public Interest Disclosure Act 2013</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
6. Schedule 2	The later of: (a) immediately after the commencement of Schedule 1 to the <i>Public Service Amendment Act 2013</i> ; and (b) the commencement of section 3 of the <i>Public Interest Disclosure Act 2013</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	15 January 2014 (paragraph (b) applies)

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 Schedule(s)

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

Schedule 1—Amendments

Australian Law Reform Commission Act 1996

1 Subsection 26(2A) (note)

Omit “or 16”.

Inspector-General of Intelligence and Security Act 1986

2 Subsection 3(1)

Insert:

disclosable conduct has the same meaning as in the *Public Interest Disclosure Act 2013*.

3 After section 8

Insert:

8A Public interest disclosure functions of Inspector-General

(1) If:

- (a) a disclosure of information has been, or is required to be, allocated under section 43 of the *Public Interest Disclosure Act 2013*; and
- (b) some or all of the disclosable conduct with which the information is concerned relates (within the meaning of that Act) to an intelligence agency;

to the extent that the conduct so relates, it is taken, for the purposes of this Act, to be action that relates to the propriety of particular activities of the intelligence agency.

Note: The Inspector-General’s functions under section 8 include inquiring into the propriety of particular activities of intelligence agencies.

- (2) However, in determining whether the Inspector-General is authorised to inquire into the matter under section 8, disregard subsection 8(4).
- (3) For the purposes of the application of this Act to the action:

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- (a) the conduct is to be treated as if it were action taken by the intelligence agency; and
 - (b) a public official who belongs (within the meaning of the *Public Interest Disclosure Act 2013*) to the intelligence agency is taken to be a member of the intelligence agency; and
 - (c) the person who disclosed the information is taken, if the disclosure is allocated to the Inspector-General, to have made a complaint to the Inspector-General in respect of the action.
- (4) However, paragraph (3)(c) does not apply if:
- (a) the person is not an Australian citizen or permanent resident, and the intelligence agency is ASIS, DIGO or DSD; or
 - (b) the intelligence agency is DIO or ONA.
- (5) It is immaterial whether the disclosable conduct occurred before or after the commencement of this section.

4 Subsection 34(1)

After “powers under this Act”, insert “or the *Public Interest Disclosure Act 2013*”.

5 Paragraph 34(5)(c)

Repeal the paragraph, substitute:

- (c) if the information is obtained by the person because the person is performing functions or duties or exercising powers under this Act:
 - (i) unless subparagraph (ii) applies—for the purposes of this Act; or
 - (ii) if the information is obtained for the purposes of an investigation by the Inspector-General under the *Public Interest Disclosure Act 2013*—for the purposes of that Act; and

Ombudsman Act 1976

6 Subsection 3(1)

Insert:

Agency Head has the same meaning as in the *Public Service Act 1999*.

APS Code of Conduct means the rules in section 13 of the *Public Service Act 1999*.

disclosable conduct has the same meaning as in the *Public Interest Disclosure Act 2013*.

7 Subsection 3(1) (definition of Secretary)

Repeal the definition, substitute:

Secretary means:

- (a) in relation to a Department—the person who is the Secretary of the Department for the purposes of the *Public Service Act 1999*; or
- (b) in relation to a Parliamentary Department—the person who is the Secretary of the Parliamentary Department for the purposes of the *Parliamentary Service Act 1999*.

8 After section 5

Insert:

5A Public interest disclosure functions of Ombudsman

- (1) If:
 - (a) a disclosure of information has been, or is required to be, allocated under section 43 of the *Public Interest Disclosure Act 2013*; and
 - (b) some or all of the disclosable conduct with which the information is concerned relates (within the meaning of that Act) to an agency (within the meaning of that Act); and
 - (c) the agency is neither an intelligence agency (within the meaning of that Act) nor the Inspector-General of Intelligence and Security;to the extent that the conduct so relates, it is taken, for the purposes of this Act, to be action that relates to a matter of administration.
- (2) For the purposes of the application of this Act to the action:
 - (a) the agency is taken to be a prescribed authority; and

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- (b) the action is to be treated as if it were action taken by the prescribed authority; and
 - (c) a public official who belongs (within the meaning of the *Public Interest Disclosure Act 2013*) to the agency is taken to be an officer of the prescribed authority; and
 - (d) the person who disclosed the information is taken, if the disclosure is allocated to the Ombudsman, to have made a complaint to the Ombudsman in respect of the action.
- (3) It is immaterial whether the disclosable conduct occurred before or after the commencement of this section.

9 After subsection 6(10)

Insert:

- (11) In considering whether to make a decision under subsection (9) relating to a complaint that includes an allegation of misconduct by an Agency Head, the Ombudsman must consult with the Australian Public Service Commissioner.
- (11A) If the Ombudsman forms the opinion:
 - (a) that a complaint could have been made under the *Parliamentary Service Act 1999*; and
 - (b) that the complaint could be more conveniently or effectively dealt with by the Parliamentary Service Commissioner;the Ombudsman may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be, and to transfer the complaint to the Parliamentary Service Commissioner.
- (11B) If the Ombudsman makes a decision under subsection (11A), the Ombudsman must:
 - (a) transfer the complaint to the Parliamentary Service Commissioner as soon as is reasonably practicable; and
 - (b) give the Parliamentary Service Commissioner any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and
 - (c) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the Parliamentary Service Commissioner.
- (11C) In considering whether to make a decision under subsection (11A) relating to a complaint that includes an allegation of misconduct by

the Secretary of a Parliamentary Department, the Ombudsman must consult with the Parliamentary Service Commissioner.

10 Subsection 8(10)

Omit “becomes of the opinion”, substitute “forms the opinion”.

11 Paragraph 8(10)(a)

Omit “principal officer”, substitute “Secretary”.

12 At the end of paragraph 8(10)(a)

Add “or”.

13 Paragraph 8(10)(b)

Omit “principal officer” (wherever occurring), substitute “Secretary”.

14 After paragraph 8(10)(b)

Insert:

- ; or (ba) if the person is the Secretary of a Parliamentary Department—the Presiding Officer or Presiding Officers (within the meaning of the *Parliamentary Service Act 1999*) in relation to the Parliamentary Department; or
- (bb) if the person is an officer of a Parliamentary Department but not the Secretary of that Parliamentary Department—the Secretary of that Parliamentary Department; or

15 Paragraphs 8(10)(c) and (d)

After “prescribed authority”, insert “(other than a Parliamentary Department)”.

16 After subsection 8(10)

Insert:

- (10A) Without limiting subsection (10), if the Ombudsman forms the opinion, either before or after completing an investigation under this Act, that there is evidence that an Agency Head may have breached the APS Code of Conduct, the Ombudsman must:
 - (a) unless the Agency Head is the Australian Public Service Commissioner—bring the evidence to the notice of the Australian Public Service Commissioner; or

(b) if the Agency Head is the Australian Public Service Commissioner—bring the evidence to the notice of the Merit Protection Commissioner.

(10B) Without limiting subsection (10), if the Ombudsman forms the opinion, either before or after completing an investigation under this Act, that there is evidence that the Secretary of a Parliamentary Department may have breached the Code of Conduct (within the meaning of the *Parliamentary Service Act 1999*), the Ombudsman must bring the evidence to the notice of the Parliamentary Service Commissioner.

(10C) Without limiting subsection (10), if the Ombudsman forms the opinion, either before or after completing an investigation under this Act, that there is evidence that the Parliamentary Service Commissioner may have breached the Code of Conduct (within the meaning of the *Parliamentary Service Act 1999*), the Ombudsman must bring the evidence to the notice of the Parliamentary Service Merit Protection Commissioner.

17 Subsection 35(4)

After “grounds for the”, insert “findings,”.

Parliamentary Service Act 1999

18 Section 16

Repeal the section.

19 Subsection 20(4)

Omit “or 16”.

20 Paragraph 40(1)(c)

Repeal the paragraph, substitute:

(c) to inquire, subject to the determinations, into public interest disclosures (within the meaning of the *Public Interest Disclosure Act 2013*), to the extent that the disclosures relate to alleged breaches of the Code of Conduct;

21 Paragraph 48(1)(a)

Repeal the paragraph, substitute:

- (a) to inquire, subject to the determinations, into public interest disclosures (within the meaning of the *Public Interest Disclosure Act 2013*), to the extent that the disclosures relate to alleged breaches of the Code of Conduct;

Public Service Act 1999

22 Section 16

Repeal the section.

23 Section 19

Omit “or 16”.

24 Paragraph 41(2)(o)

Repeal the paragraph, substitute:

- (o) to inquire, subject to the regulations, into public interest disclosures (within the meaning of the *Public Interest Disclosure Act 2013*), to the extent that the disclosures relate to alleged breaches of the Code of Conduct;

25 Paragraph 50(1)(a)

Repeal the paragraph, substitute:

- (a) to inquire, subject to the regulations, into public interest disclosures (within the meaning of the *Public Interest Disclosure Act 2013*), to the extent that the disclosures relate to alleged breaches of the Code of Conduct;

Schedule 2—Transitional provisions

1 Continued application of subsection 16(1) of the *Parliamentary Service Act 1999* in relation to reports of breaches etc.

After the commencement of this item, subsection 16(1) of the *Parliamentary Service Act 1999* as in force immediately before that commencement continues to apply in relation to any reports of breaches (or alleged breaches) of the Code of Conduct that were made before that commencement, as if the amendments and repeals made by this Act had not been made.

2 Continued application of the *Parliamentary Service Act 1999* in relation to whistleblower reports

(1) After the commencement of this item:

- (a) the *Parliamentary Service Act 1999* as in force immediately before that commencement; and
- (b) procedures established under subsection 16(2) of that Act and as in force immediately before that commencement; and
- (c) determinations made for the purposes of subsection 16(3) of that Act and as in force immediately before that commencement;

continue to apply in relation to any reports of a kind referred to in paragraph 16(2)(a) of that Act that were made before that commencement, as if the amendments and repeals made by this Act had not been made.

(2) After the commencement of this item:

- (a) the *Parliamentary Service Act 1999* as in force immediately before that commencement; and
- (b) determinations made for the purposes of subsections 16(5) and (6) of that Act and as in force immediately before that commencement;

continue to apply in relation to any reports of a kind referred to in paragraph 16(5)(a) of that Act that were made before that commencement, as if the amendments and repeals made by this Act had not been made.

3 Continued application of subsection 16(1) of the *Public Service Act 1999* in relation to reports of breaches etc.

After the commencement of this item, subsection 16(1) of the *Public Service Act 1999* as in force immediately before that commencement continues to apply in relation to any reports of breaches (or alleged breaches) of the Code of Conduct that were made before that commencement, as if the amendments and repeals made by this Act had not been made.

4 Continued application of the *Public Service Act 1999* in relation to whistleblower reports

- (1) After the commencement of this item:
- (a) the *Public Service Act 1999* as in force immediately before that commencement; and
 - (b) procedures established under subsection 16(2) of that Act and as in force immediately before that commencement; and
 - (c) regulations made for the purposes of subsection 16(3) of that Act and as in force immediately before that commencement;

continue to apply in relation to any reports of a kind referred to in paragraph 16(2)(a) of that Act that were made before that commencement, as if the amendments and repeals made by this Act had not been made.

- (2) After the commencement of this item:
- (a) the *Public Service Act 1999* as in force immediately before that commencement; and
 - (b) regulations made for the purposes of subsections 16(5) and (6) of that Act and as in force immediately before that commencement;

continue to apply in relation to any reports of a kind referred to in paragraph 16(5)(a) of that Act that were made before that commencement, as if the amendments and repeals made by this Act had not been made.

*[Minister's second reading speech made in—
House of Representatives on 29 May 2013
Senate on 24 June 2013]*

(133/13)

Public Interest Disclosure (Consequential Amendments) Act 2013 No. 134, 2013 13