



# **Public Interest Disclosure Amendment (Review) Act 2023**

**No. 23, 2023**

**An Act to amend the *Public Interest Disclosure Act 2013*, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	3
<b>Schedule 1—Main amendments</b>		<b>4</b>
Part 1—Personal work-related conduct		4
<i>Public Interest Disclosure Act 2013</i>		4
Part 2—Allocation and investigation of disclosures		6
<i>Public Interest Disclosure Act 2013</i>		6
Part 3—Protection of disclosers and witnesses		24
<i>Public Interest Disclosure Act 2013</i>		24
Part 4—Reporting and sharing information		36
<i>Public Interest Disclosure Act 2013</i>		36
Part 5—Roles of the Ombudsman and the IGIS		40
<i>Public Interest Disclosure Act 2013</i>		40
Part 6—Machinery of government changes		42
<i>Public Interest Disclosure Act 2013</i>		42
Part 7—Agencies, public officials and principal officers		46
<i>Public Interest Disclosure Act 2013</i>		46
<b>Schedule 2—Other amendments</b>		<b>50</b>
<i>Public Interest Disclosure Act 2013</i>		50
<b>Schedule 3—Application and saving provisions for Schedules 1 and 2</b>		<b>57</b>
<b>Schedule 4—Amendments contingent on the National Anti-Corruption Commission legislation</b>		<b>60</b>
Part 1—Repeal of items from the National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022 if this Act commences first		60
<i>National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022</i>		60

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Part 2—Amendments that commence if the National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022 commences before this Act	61
<i>Public Interest Disclosure Act 2013</i>	61
Part 3—Amendments that commence after this Act and the National Anti-Corruption Commission Act 2022 commence	62
<i>National Anti-Corruption Commission Act 2022</i>	62
Part 4—Amendments that commence after this Act and the National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022 commence	66
<i>Public Interest Disclosure Act 2013</i>	66



# Public Interest Disclosure Amendment (Review) Act 2023

No. 23, 2023

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## An Act to amend the *Public Interest Disclosure Act 2013*, and for related purposes

[Assented to 19 June 2023]

The Parliament of Australia enacts:

### 1 Short title

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

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	19 June 2023
2. Schedules 1 to 3	A single day to be fixed by Proclamation. However, if the provisions 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.	1 July 2023 (F2023N00174)
3. Schedule 4, Part 1	Immediately before the commencement of Schedule 1 to the <i>National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022</i> . However, the provisions do not commence at all if that Schedule commences before the commencement of the provisions covered by table item 2.	1 July 2023
4. Schedule 4, Part 2	Immediately after the commencement of the provisions covered by table item 2. However, the provisions do not commence at all if Schedule 1 to the <i>National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022</i> does not commence before that time.	Never commenced
5. Schedule 4, Part 3	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and	1 July 2023

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	(b) immediately after the commencement of section 40 of the <i>National Anti-Corruption Commission Act 2022</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
6. Schedule 4, Part 4	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of Schedule 1 to the <i>National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2023

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 Schedules

Legislation 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—Main amendments

### Part 1—Personal work-related conduct

#### *Public Interest Disclosure Act 2013*

##### 1 Section 8

Insert:

*personal work-related conduct*: see section 29A.

##### 2 Paragraph 29(2)(b)

Repeal the paragraph, substitute:

- (b) conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action resulting in the termination of the official's engagement or appointment.

##### 3 After subsection 29(2)

Insert:

- (2A) Despite subsections (1) and (2), personal work-related conduct is not *disclosable conduct* unless:
- (a) the conduct would constitute taking a reprisal against another person, or an offence under section 19 (reprisals in relation to disclosures—offences); or
  - (b) the conduct:
    - (i) is of such a significant nature that it would undermine public confidence in an agency (or agencies); or
    - (ii) has other significant implications for an agency (or agencies).

Note 1: For *personal work-related conduct*, see section 29A.

Note 2: For what constitutes *taking a reprisal*, see section 13.

- (2B) To avoid doubt, if a disclosure includes information that tends to show (or that may tend to show) disclosable conduct, the disclosure is not prevented from being a public interest disclosure only because:
- (a) the disclosure includes other information; and



- (b) the other information tends to show (or may tend to show) personal work-related conduct.

#### **4 After section 29**

Insert:

#### **29A Meaning of *personal work-related conduct***

***Personal work-related conduct*** is conduct (by act or omission) engaged in by a public official (the ***first official***) in relation to another public official (the ***second official***) that:

- (a) occurs in relation to, or in the course of, either or both of the following:
- (i) the second official's engagement or appointment as a public official;
  - (ii) the second official's employment, or exercise of functions and powers, as a public official; and
- (b) has, or would tend to have, personal implications for the second official.

Examples: The following are examples of personal work-related conduct:

- (a) conduct relating to an interpersonal conflict between the first official and the second official (including, but not limited to, bullying or harassment);
- (b) conduct relating to the transfer or promotion of the second official;
- (c) conduct relating to the terms and conditions of engagement or appointment of the second official;
- (d) disciplinary action taken in relation to the second official;
- (e) the suspension or termination of the second official's employment or appointment as a public official;
- (f) conduct in relation to which the second official is, or would have been, entitled to review under section 33 of the *Public Service Act 1999* or under any comparable review process that forms, or formed, part of the second official's terms or conditions of engagement or appointment.

## Part 2—Allocation and investigation of disclosures

### *Public Interest Disclosure Act 2013*

#### 5 Section 8

Insert:

*allocation*, in relation to a disclosure:

- (a) means the allocation of the handling of the disclosure under section 43; and
- (b) includes the reallocation of the handling of the disclosure as decided under section 45.

Example: One situation in which a disclosure may be reallocated under section 45 is in response to a recommendation by the Ombudsman or the IGIS under section 55.

*another law or power* means:

- (a) a law of the Commonwealth (including procedures under such a law), other than this Act; or
- (b) the executive power of the Commonwealth.

#### 6 Section 8 (definition of *completed*)

Before “Part 3”, insert “Division 2 of”.

#### 7 Section 8 (paragraph (a) of the definition of *disclosure investigation*)

Before “Part 3”, insert “Division 2 of”.

#### 8 Section 8 (definition of *investigate*)

Omit “to (4)”, substitute “and (3)”.

#### 9 Section 8 (definition of *suspected disclosable conduct*)

Repeal the definition.

#### 10 Subsection 26(1) (table item 2, column 3, subparagraphs (c)(i), (ii) and (iii))

Before “Part 3” (wherever occurring), insert “Division 2 of”.

## **11 Sections 43 and 44**

Repeal the sections, substitute:

### **43 Allocation of disclosure—decision by authorised officer**

#### *Scope—disclosers*

- (1) This section applies in relation to a person (the *discloser*) if:
  - (a) the discloser discloses information to an authorised officer of an agency (the *recipient agency*); or
  - (b) the discloser discloses information to the discloser's supervisor, who then gives the information to an authorised officer of an agency (also the *recipient agency*) under subsection 60A(3).

#### *Scope—decisions and previous decisions*

- (2) This section applies in relation to a decision about the allocation of a disclosure if:
  - (a) a decision has not yet been made about the allocation; or
  - (b) in a case in which the disclosure had already been allocated—a decision is made under section 45 to reallocate the disclosure to one or more agencies (which may include an agency to which the disclosure had formerly been allocated).

Example: One situation in which a disclosure may be reallocated under section 45 is in response to a recommendation by the Ombudsman or the IGIS under section 55.

#### *Allocation*

- (3) An authorised officer of the recipient agency must:
  - (a) allocate the disclosure to one or more agencies (which may or may not be the recipient agency); or
  - (b) if subsection (4) applies—decide not to allocate the disclosure to any agency.

Note: The authorised officer who allocates a disclosure need not be the authorised officer to whom the disclosure was made or given.

- (4) This subsection applies if the authorised officer is satisfied on reasonable grounds that:

**Schedule 1** Main amendments

**Part 2** Allocation and investigation of disclosures

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- (a) there is no reasonable basis on which the disclosure could be considered an internal disclosure (see section 26); or
  - (b) the conduct disclosed would be more appropriately investigated under another law or power.
- (4A) To avoid doubt, if a disclosure includes information that tends to show (or that may tend to show) disclosable conduct, there might be a reasonable basis on which the disclosure could be considered to be an internal disclosure even if:
- (a) the disclosure includes other information; and
  - (b) the other information tends to show (or may tend to show) personal work-related conduct.

Note: A disclosure may include information relating to a number of instances of conduct, some of which may be considered disclosable conduct, and some of which may not (for example, because that conduct is personal work-related conduct). Paragraph (4)(a) does not apply if one or more of those instances provide a reasonable basis on which the disclosure could be an internal disclosure under section 26.

*Relevant considerations*

- (5) In making a decision under subsection (3) in relation to the allocation of a disclosure, the authorised officer must have regard to:
- (a) the principle that an agency should not handle the disclosure unless one or more of the following circumstances apply:
    - (i) in any case—some or all of the conduct disclosed relates to the agency;
    - (ii) if the agency is the Ombudsman—some or all of the conduct disclosed relates to an agency other than an intelligence agency, or ACIC or the Australian Federal Police in relation to that agency’s intelligence functions or the IGIS;
    - (iii) if the agency is the IGIS—some or all of the conduct disclosed relates to an intelligence agency, or ACIC or the Australian Federal Police in relation to that agency’s intelligence functions;
    - (iv) if the agency is an investigative agency (other than the Ombudsman or the IGIS)—the investigative agency has power to investigate the disclosure otherwise than under this Act; and

- (b) any other matters the authorised officer considers relevant, including:
  - (i) whether subsection (8) applies (which deals with the allocation of a disclosure within the same portfolio as the recipient agency); and
  - (ii) any recommendation of the Ombudsman or the IGIS under section 55 about the allocation of the disclosure.
- (6) Before making the decision, the authorised officer must also consider whether the obligation in subsection 60(1) (which is about informing the discloser of certain matters) has been satisfied in relation to the disclosure.

*Disclosures involving examiners of ACIC*

- (7) The authorised officer must not allocate a disclosure to the IGIS if the disclosure relates to action taken by an examiner of ACIC performing functions and exercising powers as an examiner.

*Allocation to agency in same portfolio as the recipient agency*

- (8) Without limiting the powers of the authorised officer under this section, the authorised officer may allocate the disclosure to another agency in the same portfolio as the recipient agency (for example, the recipient agency's portfolio Department) if the authorised officer considers that the other agency would be better able to handle the disclosure.

Note: The disclosure cannot be allocated to an agency other than the recipient agency without the consent of the other agency, or (if the allocation is made by an authorised officer belonging to an investigative agency) consultation with the other agency: see subsection (9).

*Agency consultation or consent*

- (9) The authorised officer may allocate the disclosure to an agency other than the recipient agency only if:
  - (a) in a case in which the authorised officer belongs to an investigative agency—the authorised officer has consulted with an authorised officer in the agency to which the disclosure is to be allocated; or

## Schedule 1 Main amendments

### Part 2 Allocation and investigation of disclosures

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- (b) in any other case—an authorised officer in the agency to which the disclosure is to be allocated has consented to the allocation.

#### *Obtaining information*

- (10) For the purposes of making a decision about the allocation of the disclosure, the authorised officer may obtain information from such persons, and make such inquiries, as the authorised officer thinks fit.

Note: This subsection authorises an authorised officer to obtain information, and to make inquiries, only for the purposes of deciding to which agency (if any) a disclosure is to be allocated.

#### *14-day deadline*

- (11) The authorised officer must use the officer's best endeavours to make a decision about the allocation of the disclosure within 14 days after whichever of the following days applies:
  - (a) if no previous decision has been made about the allocation—the day the disclosure is made or given to an authorised officer;
  - (b) if the decision is made following the reconsideration of a previous decision about the allocation in response to a recommendation by the Ombudsman or the IGIS under section 55—the day the principal officer of the recipient agency receives the recommendation under that section.

## **44 Allocation of disclosure—notice of decision to allocate**

#### *Scope*

- (1) This section applies if an authorised officer decides under paragraph 43(3)(a) to allocate a disclosure to an agency.

#### *Notice of decision*

- (2) The authorised officer must, as soon as reasonably practicable, give written notice to each person or agency covered by subsection (3) of this section of the following matters:
  - (a) the allocation to the agency;
  - (b) the information that was disclosed;

- (c) the conduct disclosed;
  - (d) if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the persons and agencies covered by subsection (3) being informed—the discloser's name and contact details.
- (3) This subsection covers the following persons and agencies:
- (a) the principal officer of each agency to which the disclosure is allocated;
  - (b) the Ombudsman, if the disclosure is allocated to an agency other than:
    - (i) the Ombudsman; or
    - (ii) the IGIS; or
    - (iii) an intelligence agency; or
    - (iv) ACIC or the Australian Federal Police in relation to that agency's intelligence functions;
  - (c) the IGIS, if the recipient agency (under subsection 43(1)) is, or the disclosure is allocated to:
    - (i) an intelligence agency; or
    - (ii) ACIC or the Australian Federal Police in relation to that agency's intelligence functions.
- (4) If reasonably practicable, the authorised officer must give a copy of the notice under subsection (2) to the discloser as soon as reasonably practicable.

#### **44A Allocation of disclosure—decision not to allocate**

##### *Scope*

- (1) This section applies if an authorised officer of an agency decides, under paragraph 43(3)(b), not to allocate a disclosure to any agency.

##### *Referral of conduct for investigation under another law or power*

- (2) If the authorised officer is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power, the authorised officer must, as soon as reasonably practicable, take reasonable steps to refer the conduct

disclosed, or to facilitate its referral, for investigation under the other law or power.

*Notice of decision not to allocate disclosure*

- (3) As soon as reasonably practicable after making the decision not to allocate the disclosure, the authorised officer of the agency must:
- (a) if reasonably practicable, give written notice to the discloser of:
    - (i) the decision not to allocate the disclosure, and the reasons for the decision; and
    - (ii) if the authorised officer has taken action, or proposes to take action, under subsection (2)—the details of the action taken or proposed; and
    - (iii) if subparagraph (ii) does not apply—any courses of action that might be available to the discloser under another law or power; and
  - (b) except to the extent, if any, to which the conduct disclosed relates to an intelligence agency, or ACIC or the Australian Federal Police in relation to that agency's intelligence functions—give written notice to the Ombudsman of:
    - (i) the decision not to allocate the disclosure, and the reasons for the decision; and
    - (ii) whether the authorised officer has taken action, or proposes to take action, under subsection (2); and
    - (iii) if the authorised officer has taken, or proposes to take, such action—the details of such action; and
  - (c) to the extent, if any, to which the conduct disclosed relates to an intelligence agency, or ACIC or the Australian Federal Police in relation to that agency's intelligence functions—give written notice to the IGIS of:
    - (i) the decision not to allocate the disclosure, and the reasons for the decision; and
    - (ii) whether the authorised officer has taken action, or proposes to take action, under subsection (2); and
    - (iii) if the authorised officer has taken, or proposes to take, such action—the details of such action.



*Details of action in relation to referral*

- (4) For the purposes of subsection (3), the details of action taken, or proposed to be taken, under subsection (2) in relation the referral of the conduct disclosed for investigation under another law or power must include details of the following:
- (a) the other law or power;
  - (b) the agency or other person or body to which the conduct has been, or is to be, referred;
  - (c) the steps taken, or proposed to be taken, for the conduct to be referred or to facilitate its referral.

**12 Section 45 (heading)**

Repeal the heading, substitute:

**45 Reallocation of disclosures**

**13 Subsection 45(1)**

Repeal the subsection, substitute:

- (1) The authorised officer may, after making a decision under section 43 or this section (the *original decision*) allocating the disclosure, decide to reallocate the disclosure to one or more agencies (which may include an agency to which the disclosure had formerly been allocated).

**14 Subsection 45(2)**

Omit “Subsections 43(3) to (6)”, substitute “Subsections 43(5) to (11)”.

**15 At the end of Division 1 of Part 3**

Add:

**45A Conduct related to intelligence agencies and agencies with intelligence functions—notice to the IGIS**

*Scope*

- (1) This section applies if:
- (a) an authorised officer receives a disclosure that is:
    - (i) made to the authorised officer; or

**Schedule 1** Main amendments

**Part 2** Allocation and investigation of disclosures

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- (ii) made to a supervisor of a public official and given to the authorised officer; and
- (b) the information disclosed concerns conduct alleged to be related to:
  - (i) an intelligence agency; or
  - (ii) ACIC or the Australian Federal Police in relation to that agency's intelligence functions.

*Urgent notice within 1 business day*

- (2) If the discloser declares to the authorised officer or supervisor that the disclosure is urgent, the authorised officer must, as soon as reasonably practicable and in any case within 1 business day after the disclosure is received by the authorised officer, give a written notice to the IGIS of the following matters:
  - (a) the making of the disclosure;
  - (b) the agency to which the authorised officer belongs;
  - (c) that the discloser has declared that the disclosure is urgent;
  - (d) the information that was disclosed;
  - (e) the conduct that was disclosed;
  - (f) if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the IGIS being informed—the discloser's name and contact details.

*Notice in other cases within 14 days*

- (3) If the discloser does not declare that the disclosure is urgent, the authorised officer must, as soon as reasonably practicable before the end of 14 days after the disclosure is received by the authorised officer, give a written notice to the IGIS of the matters mentioned in paragraphs (2)(a), (b), (d), (e) and (f).

*Subsequent notices*

- (4) If the disclosure is investigated under Division 2, the principal officer of the agency to which the disclosure is allocated must give regular written notice to the IGIS about the following matters:
  - (a) the progress of the investigation;
  - (b) the anticipated time remaining before the investigation is completed;

- (c) the likelihood of any extension, or further extension, of the time for completion of the investigation being required under subsection 52(4).

#### **16 Subsection 47(1)**

Omit “the handling of”.

#### **17 Paragraph 47(2)(b)**

Repeal the paragraph, substitute:

- (b) information obtained in the course of the investigation, unless the principal officer conducting the investigation is satisfied on reasonable grounds that such information is tangential or remote to the disclosure.

Note 1: A disclosure may be reinvestigated in response to a recommendation by the Ombudsman or the IGIS under section 55.

Note 2: If the principal officer of the agency does not investigate information mentioned in paragraph (b) in the investigation of the disclosure, the principal officer may choose to investigate the information disclosed otherwise than under this Act.

#### **18 Subsections 47(3) and (4)**

Repeal the subsections, substitute:

- (3) For the purposes of subsection (2), an investigation (or reinvestigation) may include consideration of whether a different investigation (or reinvestigation) should be conducted by the agency, or another body, under another law or power.

#### **19 Paragraphs 48(1)(e) to (h)**

Repeal the paragraphs, substitute:

- (e) the information is the same, or substantially the same, as information previously disclosed under this Act, and:
  - (i) a decision was previously made under this subsection not to investigate the earlier disclosure, or not to investigate the earlier disclosure further; or
  - (ii) the earlier disclosure has been, or is being, investigated as a disclosure investigation; or
- (f) the conduct disclosed, or substantially the same conduct, is being investigated under another law or power, and the principal officer is satisfied, on reasonable grounds, that it

**Schedule 1** Main amendments

**Part 2** Allocation and investigation of disclosures

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would be inappropriate to conduct an investigation under this Act at the same time; or

- (g) the conduct disclosed, or substantially the same conduct, has been investigated under another law or power, and the principal officer is satisfied, on reasonable grounds, that there are no further matters concerning the conduct that warrant investigation; or
- (ga) the principal officer is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power; or
- (h) both:
  - (i) the principal officer of the agency has been informed by the discloser, an authorised officer of the agency or a principal officer or authorised officer of another agency that the discloser does not wish the investigation of the disclosure to be pursued; and
  - (ii) the first-mentioned principal officer is satisfied, on reasonable grounds, that there are no matters concerning the disclosure that warrant investigation; or

**20 Subsection 48(3)**

Repeal the subsection.

**21 Paragraph 49(3)(a)**

Omit “suspected disclosable conduct”, substitute “conduct disclosed”.

**22 Subsections 50(1), (1A) and (2)**

Omit “inform”, substitute “give written notice to”.

**23 Paragraph 50(2)(b)**

Repeal the paragraph, substitute:

- (b) if the principal officer has taken action, or proposes to take action, under section 50AA in relation to the referral of the conduct disclosed for investigation under another law or power—details of the following:
  - (i) the other law or power;
  - (ii) the agency or other person or body to which the conduct has been, or is to be, referred;

- (iii) the steps taken, or proposed to be taken, for the conduct to be referred or to facilitate its referral.

## **24 Subsection 50(4)**

Repeal the subsection, substitute:

- (4) The discloser may be notified of a matter under this section in the copy of the notice given to the discloser under subsection 44(4).

## **25 After section 50**

Insert:

### **50AA Decision not to investigate—referral for investigation under another law or power**

#### *Scope*

- (1) This section applies if the principal officer of the agency:
- (a) decides under section 48 not to investigate the disclosure, or not to investigate the disclosure further; and
  - (b) does not decide to investigate the disclosure under a separate investigative power (as mentioned in section 49); and
  - (c) is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power (other than a separate investigative power).

#### *Referral of conduct*

- (2) The principal officer must, as soon as reasonably practicable, take reasonable steps to refer the conduct disclosed, or to facilitate its referral, for investigation under the other law or power.

## **26 Subsections 50A(1) and (2)**

Omit “inform”, substitute “, as soon as reasonably practicable, give written notice to”.

## **27 At the end of section 50A**

Add:

- (3) The notice under subsection (1) or (2) must:

- (a) indicate whether the principal officer has taken action, or proposes to take action, under section 50AA in relation to the referral of the conduct disclosed for investigation under another law or power; and
- (b) if the principal officer has taken, or proposes to take, such action—include details of the following:
  - (i) the other law or power;
  - (ii) the agency or other person or body to which the conduct has been, or is to be, referred;
  - (iii) the steps taken, or proposed to be taken, for the conduct to be referred or to facilitate its referral.

### **28 Subsection 51(4)**

Repeal the subsection, substitute:

- (4) The principal officer must, within a reasonable time after preparing the report, give written notice of the completion of the investigation, together with a copy of the report, to:
  - (a) the discloser, if reasonably practicable; and
  - (b) the Ombudsman, unless paragraph (c) applies; and
  - (c) the IGIS, if:
    - (i) the principal officer’s agency is an intelligence agency; or
    - (ii) the principal officer’s agency is ACIC or the Australian Federal Police and the report relates to that agency’s intelligence functions.

Note: Another situation in which the copy of the report may be shared is if the investigation concerns conduct related to another agency. Section 65 may authorise such sharing, but does not limit the extent to which the sharing may be authorised or permitted under law.

### **29 Subsection 51(5)**

Omit “However, the”, substitute “The”.

### **30 Subsection 51(6)**

Repeal the subsection, substitute:

- (6) The principal officer may delete from a copy of the report given to the Ombudsman or the IGIS any material:

- (a) that is likely to enable the identification of the discloser or another person; or
- (b) the inclusion of which would contravene a designated publication restriction.

### **31 Subsection 52(1)**

Repeal the subsection, substitute:

- (1) An investigation under this Division must be completed within 90 days after:
  - (a) in the case of an investigation following the initial allocation of the disclosure to the agency concerned—the day when the disclosure was initially allocated; or
  - (b) in the case of an investigation following the reallocation of the disclosure to the agency concerned—the day when the disclosure was reallocated; or
  - (c) in the case of a reinvestigation—the day when the principal officer of the agency concerned decided to reinvestigate the relevant disclosure.

Example: One situation in which a disclosure may be reallocated, or reinvestigated, is in response to a recommendation by the Ombudsman or the IGIS under section 55.

### **32 Subsection 53(5)**

Repeal the subsection.

### **33 Section 54**

Repeal the section, substitute:

### **54 Adoption of findings of another investigation**

The principal officer conducting an investigation under this Division may, for the purposes of the investigation, adopt a finding set out in the report of:

- (a) an investigation or inquiry under another law or power; or
- (b) another investigation under this Division.

### **34 Section 56**

Repeal the section, substitute:

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## 55 The Ombudsman and the IGIS—recommendations

### *Scope*

- (1) This section applies if the Ombudsman or the IGIS (the *relevant investigative agency*):
- (a) under subsection 44(2)—is notified of the allocation of a disclosure to an agency; or
  - (b) under subsection 44A(3)—is notified of a decision not to allocate a disclosure to any agency; or
  - (c) under section 50A—is notified by the principal officer of an agency of a decision not to investigate a disclosure under Division 2, or not to investigate a disclosure further under that Division; or
  - (d) under subsection 51(4)—is notified of the completion of an investigation under Division 2 in relation to a disclosure; or
  - (e) receives a complaint under the *Ombudsman Act 1976* or the *Inspector-General of Intelligence and Security Act 1986* (as the case may be) about the handling by an agency of a disclosure.

Note: For matters in relation to disclosures under this Act that may be the subject of complaints to the Ombudsman or the IGIS, see sections 7A and 7B.

- (2) If this section applies because of a complaint mentioned in paragraph (1)(e), the section does not affect any duty, power or function the relevant investigative agency has in relation to that complaint under the relevant Act mentioned in that paragraph.

Note: The powers set out in subsections (3) to (6) are in addition to any powers the Ombudsman or the IGIS has under the relevant Act.

### *Review by the Ombudsman or the IGIS*

- (3) The relevant investigative agency may review the handling of the disclosure by any or all of the following:
- (a) if the disclosure was made to a supervisor of the discloser—the supervisor;
  - (b) the authorised officer to whom the disclosure was made or given;
  - (c) the principal officer of an agency to which the disclosure was allocated;



- (d) any other public official involved in handling the disclosure.
- (4) For the purposes of the review, the relevant investigative agency may obtain information or documents from such persons, and make such inquiries, as that relevant investigative agency thinks fit.

*Review recommendations*

- (5) As a result of the review, the relevant investigative agency may, by written notice, make such recommendations as the relevant investigative agency thinks fit to either or both of the following:
- (a) the principal officer of the agency in which the disclosure was made;
  - (b) the principal officer of an agency to which the disclosure was allocated.

Note: However, the relevant investigative agency is not required to make recommendations as a result of the review.

- (6) Without limitation, recommendations under subsection (5) may include any or all of the following:
- (a) a recommendation that the disclosure should be allocated;
  - (b) a recommendation that the disclosure should be reallocated to a different agency or agencies;
  - (c) a recommendation that the disclosure should be investigated;
  - (d) a recommendation that the disclosure should be reinvestigated by the same or a different agency;
  - (e) a recommendation that any other action be taken in relation to:
    - (i) the disclosure or its handling; or
    - (ii) the discloser, any supervisor of the discloser, any authorised officer of an agency or any public official belonging to an agency.

*Response by principal officer*

- (7) A principal officer may respond to any recommendations under subsection (5) as the principal officer thinks fit, including by doing any or all of the following:
- (a) directing the allocation (or reallocation) of the disclosure;
  - (b) investigating (or reinvestigating) the disclosure;

- (c) taking any other action in relation to the handling of the disclosure.
- (8) A principal officer must, as soon as reasonably practicable, give written notice to the relevant investigative agency of:
  - (a) any action taken, or proposed to be taken, in response to a recommendation by the agency under subsection (5); and
  - (b) if no action is proposed to be taken in response to such a recommendation—the reason why no such action has been taken or is proposed.

## 56 Disclosure to a member of an Australian police force

### *Scope*

- (1) This section applies if, in the course of a disclosure investigation, the person (the **investigator**) conducting the investigation suspects on reasonable grounds that information (the **relevant information**), consisting of all or part of any of the following information, is evidence of the commission of an offence against a law of the Commonwealth, a State or a Territory:
  - (a) the information disclosed;
  - (b) any other information obtained in the course of the investigation.

### *Power to give information to police*

- (2) The investigator may give the relevant information to a member of an Australian police force responsible for the investigation of the offence.

### *Duty to give information to police*

- (3) However, if the investigator suspects on reasonable grounds that the offence is punishable by imprisonment for life or by imprisonment for a period of at least 2 years, the investigator must give the relevant information to a member of an Australian police force responsible for the investigation of the offence.
- (4) However, subsection (3) does not apply:

- (a) if the investigator believes on reasonable grounds that the agency to which the investigator belongs has the capacity and the appropriate skills and resources needed:
  - (i) to investigate the commission of the offence; and
  - (ii) to meet the requirements of the Commonwealth Director of Public Prosecutions in gathering evidence and preparing briefs of evidence in relation to the commission of the offence; or
- (b) if the investigator suspects on reasonable grounds that the relevant information raises a corruption issue (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*), and:
  - (i) the Integrity Commissioner has been notified, or is to be notified, of the issue under section 19 of that Act; or
  - (ii) the Integrity Commissioner is already aware of the issue.

*No limitation on power to notify police*

- (5) This section does not, by implication, limit a person's power to notify a matter to a member of an Australian police force.

## Part 3—Protection of disclosers and witnesses

### *Public Interest Disclosure Act 2013*

#### 35 Section 8 (definition of *detriment*)

Repeal the definition, substitute:

*detriment* has a meaning affected by section 13.

#### 36 Section 8

Insert:

*provides assistance*: for when a person *provides assistance* in relation to a disclosure, see section 12A (Witnesses—immunity from liability etc.).

*reprisal*: see the definition of *takes a reprisal* in section 13.

#### 37 Part 2 (heading)

Repeal the heading, substitute:

## Part 2—Protection of disclosers and witnesses

#### 38 Section 9 (paragraph beginning “An individual”)

After “making a public interest disclosure”, insert “or providing assistance in relation to a public interest disclosure”.

#### 39 Section 9 (note 2)

Repeal the note, substitute:

Note 2: The principal officer and the authorised officers of an agency have a duty to protect a person who is, or has been, a public official belonging to the agency from reprisals relating to a public interest disclosure (see subsections 59(9) and 60(2)).

#### 40 At the end of Subdivision A of Division 1 of Part 2

Add:

## **12A Witnesses—immunity from liability etc.**

### *Scope*

- (1) This section applies to an individual (the **witness**) who provides assistance in relation to a public interest disclosure (other than the individual who makes the disclosure), subject to section 12B.

### *Meaning of provides assistance*

- (2) A person **provides assistance** in relation to a public interest disclosure if the person gives information or produces a document or other thing, or answers a question, that the person considers on reasonable grounds to be relevant to:
  - (a) the making of a decision in relation to the allocation of a disclosure under section 43; or
  - (b) a disclosure investigation or a proposed disclosure investigation; or
  - (c) a review or proposed review by the Ombudsman or the IGIS, under subsection 55(3), about the handling of a disclosure.

### *Immunity from civil, criminal or administrative action*

- (3) The witness is not subject to any civil, criminal or administrative liability (including disciplinary action) because of the assistance provided.

### *Immunity from enforcement of remedies or rights*

- (4) No contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the witness on the basis of the assistance provided.

### *Absolute privilege*

- (5) Without limiting subsections (3) and (4):
  - (a) the witness has absolute privilege in proceedings for defamation in respect of the assistance provided; and
  - (b) a contract to which the witness is a party must not be terminated on the basis that the assistance provided constitutes a breach of the contract.

## 12B Witnesses—exceptions to immunities

### *Scope*

- (1) This section applies to an individual (the **witness**) who provides assistance in relation to a public interest disclosure (other than the individual who makes the disclosure).

### *False or misleading statements etc.*

- (2) Section 12A does not apply to the civil, criminal or administrative liability (including any disciplinary action) of the witness for knowingly making a statement that is false or misleading.
- (3) Without limiting subsection (2) of this section, section 12A does not apply to the liability of the witness for an offence against section 137.1, 137.2, 144.1 or 145.1 of the *Criminal Code*.

### *Designated publication restrictions*

- (4) Section 12A does not apply to proceedings against the witness for contravening a designated publication restriction.

Note: For **designated publication restriction**, see section 8.

### *Assistance related to witness' conduct*

- (5) To avoid doubt, if the assistance provided relates to the witness' own conduct, section 12A does not affect the witness' liability for the conduct.

## 41 Subsection 13(1)

Repeal the subsection, substitute:

- (1) A person (the **first person**) **takes a reprisal** against another person (the **second person**) if:
  - (a) the first person engages in conduct that:
    - (i) results in detriment to the second person; or
    - (ii) consists of, or results in, a threat to cause detriment to the second person; and
  - (b) when the conduct is engaged in, the first person believes or suspects that the second person, or any other person:
    - (i) has made a public interest disclosure; or

- (ii) may have made a public interest disclosure; or
- (iii) proposes to make a public interest disclosure; or
- (iv) could make a public interest disclosure; and
- (c) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.

Examples: Persons against whom a reprisal may be taken within the meaning of this section in relation to the making of a public interest disclosure by any person include the following:

- (a) the person who made the disclosure;
- (b) a witness in relation to the disclosure, within the meaning of section 12A.

#### **42 Subsection 13(2)**

Omit “any disadvantage, including”.

#### **43 Paragraph 13(2)(c)**

Omit “detriment”, substitute “disadvantage”.

#### **44 At the end of subsection 13(2)**

Add:

- ; (e) harassment or intimidation of a person;
- (f) harm or injury to a person, including psychological harm;
- (g) damage to a person’s property;
- (h) damage to a person’s reputation;
- (i) damage to a person’s business or financial position;
- (j) any other damage to a person.

#### **45 At the end of section 13**

Add:

- Note 1: A person may be liable in a civil action under section 14, 15 or 16 for taking a reprisal against another person.
- Note 2: If a person engages in conduct that, in substance, constitutes taking a reprisal against another person, the person may be guilty of an offence against section 19.

#### **46 Section 19**

Repeal the section, substitute:

## 19 Reprisals in relation to disclosures—offences

### *Taking a reprisal—by causing detriment*

- (1) A person (the **first person**) commits an offence in relation to another person (the **second person**) if:
- (a) the first person engages in conduct; and
  - (b) engaging in the conduct results in detriment to the second person; and
  - (c) when the conduct is engaged in, the first person believes or suspects that the second person, or any other person:
    - (i) has made a public interest disclosure; or
    - (ii) may have made a public interest disclosure; or
    - (iii) proposes to make a public interest disclosure; or
    - (iv) could make a public interest disclosure; and
  - (d) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.

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

### *Taking a reprisal—by a threat to cause detriment*

- (2) A person (the **first person**) commits an offence in relation to another person (the **second person**) if:
- (a) the first person engages in conduct; and
  - (b) engaging in the conduct consists of, or results in, a threat to cause detriment to the second person; and
  - (c) the first person is reckless as to whether the second person fears that the threat would be carried out; and
  - (d) when the conduct is engaged in, the first person believes or suspects that the second person, or any other person:
    - (i) has made a public interest disclosure; or
    - (ii) may have made a public interest disclosure; or
    - (iii) proposes to make a public interest disclosure; or
    - (iv) could make a public interest disclosure; and
  - (e) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.

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



- (3) Subsection (2) applies whether or not the threat mentioned in paragraph (2)(b) is:
- (a) express or implied; or
  - (b) conditional or unconditional.

*Exception—reasonable administrative action*

- (4) Subsections (1) and (2) do not apply if the conduct engaged in by the first person is administrative action that is reasonable to protect the second person from detriment.

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

*No requirement to prove matters related to a public interest disclosure*

- (5) In a prosecution for an offence against this section, it is not necessary to prove that any person:
- (a) has made a public interest disclosure; or
  - (b) may have made a public interest disclosure; or
  - (c) proposes to make a public interest disclosure; or
  - (d) could make a public interest disclosure.

Note 1: The offences against subsections (1) and (2) relate to whether the first person has taken a reprisal (within the meaning of section 13) against the second person.

Note 2: The offence against subsection (1) relates to a reprisal that consists of causing detriment to another person. The offence against subsection (2) relates to a reprisal that involves a threat to cause detriment to another person.

Note 3: For actions that constitute a *detriment*, see subsection 13(2).

Note 4: Proof of intention, knowledge or recklessness will satisfy a fault element of recklessness (see subsection 5.4(4) of the *Criminal Code*).

## **47 Section 20 (heading)**

Omit “Use or disclosure”, substitute “**Disclosure or use**”.

## **48 Subsection 20(2)**

Omit “(the *first person*)”.

#### **49 Paragraph 20(3)(e)**

Repeal the paragraph, substitute:

- (e) the person likely to be identified by the identifying information has consented to the disclosure or use of the identifying information, or acted in a way that is inconsistent with keeping that person's identity confidential;

#### **50 At the end of section 20**

Add:

- (4) For the purposes of paragraph (3)(a), and without limitation, a person discloses or uses identifying information for the purposes of this Act if the person does so:
  - (a) for the purpose of providing assistance in relation to a public interest disclosure; or
  - (b) for the purpose of providing legal advice, or other professional assistance, relating to a public interest disclosure, in the circumstances mentioned in paragraph 67(2)(a); or
  - (c) in the performance or exercise (or purported performance or exercise) of a function or power conferred by this Act, in the circumstances mentioned in subsection 78(1).

#### **51 Section 34 (note 2)**

Omit "section 60A", substitute "subsection 60A(3)".

#### **52 Paragraph 51(2)(e)**

Repeal the paragraph, substitute:

- (e) claims of any reprisal taken against the discloser, or any other person, that relates to the matters considered in the course of the investigation, together with any related evidence; and
- (f) the agency's response to any claims or evidence mentioned in paragraph (e).

#### **53 Section 57**

Repeal the section.

#### **54 Section 59**

Repeal the section, substitute:

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## **59 Additional obligations of principal officers**

### *Facilitating public interest disclosures*

- (1) The principal officer of an agency must take reasonable steps to ensure that:
  - (a) 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
  - (b) public officials who belong to the agency are aware of the identity of each authorised officer of the agency.
- (2) The principal officer of an agency must take reasonable steps to encourage and support:
  - (a) public officials who make, or are considering making, public interest disclosures relating to the agency; and
  - (b) any other persons who provide, or are considering providing, assistance in relation to such public interest disclosures.

### *Procedures for dealing with public interest disclosures*

- (3) The principal officer of an agency must, by instrument in writing, establish procedures for facilitating and dealing with public interest disclosures relating to the agency.
- (4) The procedures must:
  - (a) deal with the assessment of risks that reprisals may be taken in relation to those disclosures; and
  - (b) provide for confidentiality of investigative processes; and
  - (c) comply with any standards in force under subsection 74(1).
- (5) An instrument under subsection (3) is not a legislative instrument.

### *Responding to investigations*

- (6) The principal officer of an agency must, as soon as reasonably practicable, ensure that appropriate action in relation to the agency is taken in response to any recommendations in a report under section 51.

*Training and education*

- (7) The principal officer of an agency must take reasonable steps to provide ongoing training and education to public officials belonging to the agency about this Act including, without limitation, training and education about the following:
- (a) integrity and accountability;
  - (b) how to make a public interest disclosure;
  - (c) the protections available under this Act;
  - (d) the performance by those officials of their functions under this Act;
  - (e) the circumstances (if any) in which a public interest disclosure must be referred to an agency, or other person or body, under another law of the Commonwealth.
- (8) The principal officer of an agency must take reasonable steps to ensure that a public official belonging to the agency who is appointed to a position that requires, or could require, the public official to perform the functions or duties, or exercise the powers, of an authorised officer or supervisor under this Act is given training and education appropriate for the position within a reasonable time after that appointment.

*Duty to protect public officials against reprisals*

- (9) The principal officer of an agency must take reasonable steps to protect public officials who belong to the agency against reprisals that have been, or may be, taken in relation to public interest disclosures that:
- (a) have been made; or
  - (b) may have been made; or
  - (c) are proposed to be made; or
  - (d) could be made;
- to an authorised officer or a supervisor belonging to the agency.

**55 Section 60**

Before “If”, insert “(1)”.

## **56 Subparagraph 60(b)(ii)**

Omit “what this Act requires in order for the disclosure to be an internal disclosure”, substitute “the consequences of making the disclosure”.

## **57 After paragraph 60(d)**

Insert:

- (da) advise the individual about the circumstances (if any) in which a public interest disclosure must be referred to an agency, or other person or body, under another law of the Commonwealth; and

## **58 At the end of section 60**

Add:

*Duty to protect public officials against reprisals*

- (2) An authorised officer of an agency must take reasonable steps to protect public officials who belong to the agency against reprisals that have been, or may be, taken in relation to public interest disclosures that the authorised officer suspects on reasonable grounds:
  - (a) have been made or given to the officer; or
  - (b) may have been made or given to the officer; or
  - (c) are proposed to be made or given to the officer; or
  - (d) could be made or given to the officer.

## **59 Section 60A**

Repeal the section, substitute:

### **60A Additional obligations of supervisors**

*Scope*

- (1) This section applies if:
  - (a) a public official (the *discloser*) discloses information to a supervisor of the official; and
  - (b) the supervisor has reasonable grounds to believe that the information concerns, or could concern, one or more instances of disclosable conduct; and

- (c) the supervisor is not an authorised officer of the agency to which the supervisor belongs.

*Obligation to explain matters to discloser*

- (2) The supervisor must:
  - (a) inform the discloser that the disclosure could be treated as an internal disclosure for the purposes of this Act; and
  - (b) explain to the discloser the procedures under this Act for such a disclosure to be:
    - (i) given to an authorised officer; and
    - (ii) allocated to the discloser's agency or another agency; and
    - (iii) investigated by the principal officer of that agency; and
  - (c) advise the individual about the circumstances (if any) in which a public interest disclosure must be referred to an agency, or other person or body, under another law of the Commonwealth; and
  - (d) explain to the discloser the civil and criminal protections this Act provides to protect disclosers, and those providing assistance in relation to such disclosures, from reprisals.

*Obligation to give information to an authorised officer*

- (3) The supervisor must, as soon as reasonably practicable after the disclosure is made, give the information to an authorised officer of the agency.

**60 Subsection 61(1)**

Before "Part 3", insert "Division 2 of".

**61 At the end of section 61**

Add:

- (4) A public official must use the public official's best endeavours to assist any other public official to exercise a right, or perform a duty or function, under this Act.

**62 Amendments of listed provisions**

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<b>Amendments to omit references to threats to take reprisals</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit</b>	<b>Substitute</b>
1	Section 9	, or to threaten to take a reprisal,	
2	Subsection 14(1)	threatened to take, or is taking or threatening to take,	is taking
3	Paragraph 14(1)(a)	or threat	
4	Paragraph 14(1)(b)	threatened to take, or is taking or threatening to take,	is taking
5	Subparagraphs 14(1)(b)(i), (ii) and (iii)	or threat (wherever occurring)	
6	Subsection 14(2)	or threat	
7	Subsection 15(1)	threatened to take, or is taking or threatening to take,	is taking
8	Subparagraph 15(1)(a)(i)	, or threatening to take,	
9	Subparagraph 15(1)(a)(ii)	or threat	
10	Paragraph 15(1)(b)	, or threatening to take,	
11	Section 19A	, or the threat to take a reprisal,	
12	Section 19A	or threat	

## Part 4—Reporting and sharing information

### *Public Interest Disclosure Act 2013*

#### 63 Sections 64 to 66

Repeal the sections, substitute:

#### 64 Simplified outline of this Division

This Division authorises the sharing of information about a disclosure between agencies, including between investigative agencies. It also provides an offence for the further disclosure, or use, of information that is the subject of a legal practitioner disclosure, except for the purposes of providing legal advice and professional assistance.

#### 65 Sharing information and documents between agencies

##### *Scope*

- (1) This section applies to the provision of information and documents in relation to a disclosure that are relevant to the disclosure or the conduct disclosed, including (but not limited to) a copy of a report of an investigation into the disclosure under section 51.
- (2) To avoid doubt, this section does not limit the extent to which the provision of information or documents may be authorised or permitted under this or any other law.

##### *Authorised sharing*

- (3) The principal officer of an agency (the **sharing agency**) mentioned in column 1 of the following table is authorised to provide any such information and documents to the principal officer of an agency (the **destination agency**) mentioned in column 2 of the table, if the principal officer of the sharing agency considers the information or documents to be relevant to the destination agency's functions.



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<b>Item</b>	<b>Column 1 Sharing agency</b>	<b>Column 2 Destination agency</b>
1	An investigative agency, including the Ombudsman and the IGIS.	Any of the following: (a) another investigative agency; (b) the portfolio Department of the agency to which the conduct disclosed relates; (c) the agency to which the conduct disclosed relates.
2	If the disclosure is allocated within an agency's portfolio under subsection 43(8)—the agency to which the disclosure is allocated.	The agency to which the conduct disclosed relates.
3	If the disclosure is allocated within an agency's portfolio under subsection 43(8)—the agency to which the conduct disclosed relates.	The agency to which the disclosure is allocated.

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(4) The sharing agency may delete any material from the information to be provided if the sharing agency considers it appropriate to do so.

(5) Subsection (3) does not authorise the provision of the discloser's name and contact details if the discloser does not consent to the provision of those details.

#### **64 Paragraphs 75(1)(b) and (c)**

Omit "61", substitute "61 or 65".

#### **65 Section 76 (heading)**

Repeal the heading, substitute:

## 76 Annual reports by the Ombudsman

### 66 After subparagraph 76(2)(a)(ii)

Insert:

- (iia) the number of disclosures allocated to the agency during the financial year;

### 67 After subparagraph 76(2)(a)(iii)

Insert:

- (iia) the time taken to conduct those disclosure investigations;

### 68 At the end of subsection 76(2)

Add:

- ; and (e) the information covered by paragraphs (a) to (d) as it relates to each of the following periods:
  - (i) the period from 1 July to 31 December in the financial year, as reported under section 76A, with any updates or necessary corrections or revisions indicated;
  - (ii) the period from 1 January to 30 June in the financial year.

### 69 After section 76

Insert:

## 76A Six-monthly reports by the Ombudsman

*Report on period 1 July to 31 December each year*

- (1) The Ombudsman must, as soon as practicable after the end of each calendar year, prepare and give to the Minister, for presentation to Parliament, a report on the operation of this Act during the period from 1 July to 31 December in the calendar year.

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

- (2) The report must include the information covered by paragraphs 76(2)(a) to (d) (which deal with annual reports) in relation to the period from 1 July to 31 December in the calendar year.

- (3) Subsections 76(3) and (4) apply in relation to a report under this section in the same way as they apply in relation to a report under section 76.

Note: Subsections 76(3) and (4) relate to the powers of the Ombudsman and principal officers of agencies in relation to the preparation of annual reports.

## Part 5—Roles of the Ombudsman and the IGIS

### *Public Interest Disclosure Act 2013*

#### 70 At the end of Division 3 of Part 1

Add:

#### 7A Role of the Ombudsman under the *Ombudsman Act 1976*

- (1) A complaint may be made to the Ombudsman under the *Ombudsman Act 1976* about the handling by an agency of a disclosure under this Act, including complaints about the following matters:
  - (a) whether the disclosure has been handled reasonably;
  - (b) the allocation of the disclosure (including any delay or failure to allocate the disclosure);
  - (c) the investigation of the disclosure (including any delay or failure to investigate the disclosure);
  - (d) compliance with this Act by the agency or any of its officers, including its principal officer (including any failure to comply with this Act);
  - (e) any other matter relating to the handling of the disclosure.
- (2) Subsection (1) does not apply in relation to:
  - (a) the IGIS; or
  - (b) an intelligence agency; or
  - (c) ACIC or the Australian Federal Police if the disclosure relates to the intelligence functions of that agency.
- (3) This section does not limit section 5 or 5A of the *Ombudsman Act 1976*.

Note: Section 5 of the *Ombudsman Act 1976* sets out the functions of the Ombudsman under that Act. Section 5A of that Act has the effect of providing that those functions extend to investigating complaints relating to the handling of disclosures under this Act.

**7B Role of the IGIS under the *Inspector-General of Intelligence and Security Act 1986***

- (1) A complaint may be made to the IGIS under the *Inspector-General of Intelligence and Security Act 1986* about the handling of a disclosure under this Act by:
- (a) an intelligence agency; or
  - (b) ACIC or the Australian Federal Police if the disclosure relates to the intelligence functions of that agency.
- (2) Without limitation, the complaint may relate to any of the following matters:
- (a) whether the disclosure has been handled reasonably;
  - (b) the allocation of the disclosure (including any delay or failure to allocate the disclosure);
  - (c) the investigation of the disclosure (including any delay or failure to investigate the disclosure);
  - (d) compliance with this Act by the agency or any of its officers, including its principal officer (including any failure to comply with this Act);
  - (e) any other matter relating to the handling of the disclosure.
- (3) This section does not limit section 8 or 8A of the *Inspector-General of Intelligence and Security Act 1986*.

Note: Section 8 of the *Inspector-General of Intelligence and Security Act 1986* sets out the functions of the Inspector-General of Intelligence and Security under that Act. Section 8A of that Act has the effect of providing that those functions extend to investigating complaints relating to the handling of disclosures under this Act.

## Part 6—Machinery of government changes

### *Public Interest Disclosure Act 2013*

#### 71 Section 8

Insert:

*affected agency*, in relation to a machinery of government change: see section 73A.

*change time*, in relation to a machinery of government change: see section 73A.

*machinery of government change*: see section 73A.

*new agency*, in relation to a machinery of government change: see section 73A.

*transferred function*, in relation to a machinery of government change: see section 73A.

#### 72 Before subsection 35(1)

Insert:

*Main definition*

#### 73 Before subsection 35(2)

Insert:

*Conduct by unincorporated subsidiary agencies*

#### 74 Subsection 35(3)

Repeal the subsection.

#### 75 At the end of section 35

Add:

Note: A machinery of government change (the abolition of an agency or a transfer of functions between agencies) may affect how disclosures are handled under this Act: see sections 73A to 73D.

## **76 At the end of Division 3 of Part 4**

Add:

### **Subdivision D—Machinery of government changes**

#### **73A Scope of Subdivision**

This Subdivision applies if:

- (a) either of the following (a *machinery of government change*) occurs in relation to an agency (the *affected agency*) at a particular time (the *change time*):
  - (i) the affected agency is abolished;
  - (ii) there is a change to the matters dealt with by the affected agency; and
- (b) as a result of the machinery of government change, a function (a *transferred function*) of the affected agency is transferred to another agency (the *new agency*).

#### **73B Machinery of government changes—conduct relating to affected agency**

Despite section 35 (which defines when conduct relates to an agency), conduct that occurred before the change time and that would, apart from this section, relate to the affected agency is instead taken, for the purposes of this Act, to relate to the new agency if:

- (a) the conduct relates to a transferred function; or
- (b) the PID rules provide that conduct of that kind is to be taken to relate to the new agency.

#### **73C Machinery of government changes—disclosures made before change**

- (1) This section applies if:
  - (a) before the change time, a person disclosed information to an authorised officer of an affected agency, or to a supervisor belonging to the affected agency; and
  - (b) the information concerns conduct that is taken to relate to the new agency under section 73B; and

- (c) immediately before the change time, consideration of the disclosure under this Act had not started, or (if it had started) had not ended.
- (2) For the purposes of this Act:
  - (a) the disclosure is taken to have been made to an authorised officer of the new agency, or to a supervisor belonging to the new agency; and
  - (b) if the disclosure had, before the change time, been allocated to the affected agency, after that time it is taken to have been allocated to the new agency; and
  - (c) if an investigation under this Act had, before the change time, started in relation to the disclosure, the investigation may continue as if the disclosure had been made in relation to conduct that relates to the new agency; and
  - (d) anything done (including any decision made) for the purposes of this Act in relation to the disclosure before the change time by any person is taken, for the purposes of the application of this Act, to have been done after the change time; and
  - (e) after the change time, this Act continues to apply in relation to the disclosure accordingly.

### **73D Machinery of government changes—information transfer**

- (1) This section applies if:
  - (a) before the change time, a person disclosed information to an authorised officer of an affected agency, or to a supervisor belonging to the affected agency; and
  - (b) the information concerns conduct that is taken to relate to the new agency under section 73B; and
  - (c) either:
    - (i) immediately before the change time, consideration of the disclosure under this Act had not started, or (if it had started) had not ended; or
    - (ii) before or after the change time, a report into an investigation under section 51 in relation to the disclosure is completed by the principal officer of the affected agency.



- (2) The principal officer of the affected agency is authorised to provide the following information (including documents) in relation to the disclosure to the principal officer of the new agency:
- (a) any report of the investigation under section 51;
  - (b) any notice of recommendations by the Ombudsman or the IGIS under section 55;
  - (c) any other information in relation to the disclosure.

## Part 7—Agencies, public officials and principal officers

### *Public Interest Disclosure Act 2013*

#### **77 Section 8**

Insert:

*Commonwealth entity* has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

#### **78 Section 8 (paragraph (a) of the definition of *Department*)**

Omit “an Executive Agency or Statutory Agency”, substitute “a Commonwealth entity”.

#### **79 Section 8 (definitions of *Executive Agency* and *Statutory Agency*)**

Repeal the definitions.

#### **80 Subsection 69(1) (table items 1 to 6)**

Repeal the items, substitute:

1	An APS employee in a Department.	The Department.
2	A member of staff of an agency other than a Department (including an APS employee in the agency).	The agency.
3	A Secretary of a Department.	The Department.
4	The principal officer of an agency other than a Department (see section 73).	The agency.

#### **81 Subsection 69(1) (table item 10, column 1)**

After “Defence Force”, insert “, or a cadet, officer or instructor in the Australian Defence Force Cadets”.

#### **82 Subsection 69(1) (table item 13)**

Repeal the item, substitute:

13	An individual who:	The agency.
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- (a) is employed by the Commonwealth otherwise than as an APS employee; and
- (b) performs duties for an agency.

**83 Subsection 69(1) (table item 17, column 1)**

Omit “, a judicial officer”.

**84 Subsection 69(1) (table items 17A, 18 and 19, column 1)**

Omit “(other than a judicial officer)”.

**85 At the end of subsection 69(1) (after the table)**

Add:

Note: A public interest disclosure may be made by a person who is, or has been, a public official within the meaning of this Subdivision (see section 26).

**86 Subsection 69(2)**

Omit “a judicial officer or”.

**87 Subsection 69(3)**

Omit “item 6”, substitute “item 2”.

**88 Subsection 69(4)**

Repeal the subsection, substitute:

- (4) Despite subsections (1) and (2), the following are not **public officials**:
  - (a) a judicial officer;
  - (b) a member of a Royal Commission;
  - (c) a member of Parliament;
  - (d) a person employed or engaged under the *Members of Parliament (Staff) Act 1984*.

**89 Subsection 70(3A)**

Repeal the subsection, substitute:

- (3A) This section does not apply if the individual is:
  - (a) a judicial officer; or

- (b) a member of a Royal Commission; or
- (c) a member of Parliament; or
- (d) a person employed or engaged under the *Members of Parliament (Staff) Act 1984*.

## 90 Sections 71 and 72

Repeal the sections, substitute:

### 71 Meaning of *agency*

- (1) *Agency* means:
  - (a) a Commonwealth entity; or
  - (b) a prescribed authority.
- (2) However, a Royal Commission is not an agency.

### 72 Meaning of *prescribed authority*

- (1) *Prescribed authority* means one of following entities:
  - (a) a Commonwealth company;
  - (b) the part of the Defence Department known as the Australian Geospatial-Intelligence Organisation;
  - (c) the part of the Defence Department known as the Defence Intelligence Organisation;
  - (d) the High Court or any court created by the Parliament;
  - (e) a body that is:
    - (i) established by a law of the Commonwealth; and
    - (ii) prescribed by the PID rules;
  - (f) the person holding, or performing the duties of, an office that is:
    - (i) established by a law of the Commonwealth; and
    - (ii) prescribed by the PID rules.
- (2) The entities mentioned in paragraphs (b) and (c) of the definition of *prescribed authority* in subsection (1) are prescribed authorities in their own right, and not in their capacities as part of the Defence Department.

## 91 Subsection 73(1) (table items 2 and 3)

Repeal the items.

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**92 Subsection 73(1) (at the end of the table)**

Add:

- |    |                   |  |
|----|-------------------|--|
| 10 | Any other agency. | Whichever of the following individuals is applicable:<br>(a) the chief executive officer, or the head, however described, of the agency;<br>(b) if another individual is ascertained in accordance with the PID rules—that other individual. |
|----|-------------------|--|

## Schedule 2—Other amendments

### *Public Interest Disclosure Act 2013*

#### **1 Paragraph 6(b)**

After “public officials”, insert “and former public officials”.

#### **2 Paragraphs 6(c) and (d)**

After “public officials”, insert “, and former public officials,”.

#### **3 Section 7**

Repeal the section, substitute:

#### **7 Simplified outline of this Act**

##### *General*

This Act provides a framework for current and former public officials to disclose allegations of misconduct (“disclosable conduct”) in the Commonwealth public sector.

Agencies are required to investigate disclosures of potential disclosable conduct.

Protection from reprisals is provided for current and former public officials making disclosures, and persons providing assistance in disclosure investigations and reviews.

##### *What is a public interest disclosure?*

A public interest disclosure is a disclosure of information relating to disclosable conduct alleged to have occurred within a Commonwealth agency (for relevant agencies, see sections 71 and 72).

There are 4 kinds of public interest disclosure (see section 26), which are as follows:

- (a) an internal disclosure (disclosed within an agency);
- (b) an external disclosure (disclosed outside Government);

- (c) an emergency disclosure;
- (d) a legal practitioner disclosure.

*What is disclosable conduct?*

Disclosable conduct, broadly speaking, includes conduct that:

- (a) is illegal or corrupt; or
- (b) results in a wastage of money or property; or
- (c) results in unreasonable danger or risk to health and safety; or
- (d) results in danger, or an increased risk of danger, to the environment.

See section 29 for more detail relating to disclosable conduct.

Personal work-related conduct (for example, bullying or harassment) is not generally disclosable conduct. However, personal work-related conduct may be treated as disclosable conduct in some circumstances. See subsection 29(2A) and section 29A for more detail relating to personal work-related conduct.

*Investigation of internal disclosures*

Generally, this Act provides for a disclosure of disclosable conduct to be first investigated internally, as an internal disclosure.

Internal disclosures may be made by public officials (and former public officials) to supervisors and authorised officers of Commonwealth agencies, including, in appropriate cases, an authorised officer of the Ombudsman and the IGIS.

Part 3 deals with the allocation of the handling of internal disclosures to appropriate agencies, and their investigation by the principal officers of those agencies. Investigative agencies may instead use their own investigative powers to investigate disclosures.

If an authorised officer or principal officer of an agency considers that the conduct disclosed would be more appropriately investigated under another law or power, the officer must take

reasonable steps to refer the conduct, or to facilitate its referral, for investigation under the other law or power.

Notice of decisions related to the allocation and investigation of disclosures must be given to the relevant discloser and:

- (a) the Ombudsman; or
- (b) the IGIS, for disclosures related to intelligence agencies, or ACIC or the Australian Federal Police in relation to that agency's intelligence functions.

The Ombudsman and the IGIS may also make recommendations to principal officers relating to the allocation and investigation of disclosures.

*Administrative support for the investigation and review of internal disclosures*

Part 4 provides for the following:

- (a) obligations of principal officers, authorised officers and supervisors of public officials to facilitate and support the making of internal disclosures;
- (b) functions of the Ombudsman and the IGIS to facilitate and support the operation of this Act;
- (c) the sharing of information between relevant agencies, the Ombudsman and the IGIS to facilitate the investigation and review of internal disclosures;
- (d) the public officials, agencies and principal officers covered by this Act;
- (e) how this Act deals with disclosures in relation to agencies that are affected by machinery of government changes.

*Protection of disclosers and witnesses*

The protection provisions in Division 1 of Part 2 relate to all forms of public interest disclosure (whether internal, external, emergency or legal practitioner). They deal with the protection of disclosers, and witnesses (that is, persons providing assistance in disclosure investigations and reviews), from reprisals by providing for the following:



- (a) immunity from liability that is related to disclosures and such assistance;
- (b) criminal offences for such reprisals, and for disclosing the identity of disclosers;
- (c) civil remedies for reprisals related to disclosures.

*Other matters*

Part 5 deals with additional matters related to the administration of this Act, including regular reports to Parliament by the Ombudsman.

#### **4 Section 8 (definition of *Commonwealth contract*)**

Omit “subsection 30(3)”, substitute “subsections 30(3) and (4)”.

#### **5 Section 8 (paragraphs (h) and (i) of the definition of *designated publication restriction*)**

Repeal the paragraphs, substitute:

- (h) an order under subsection 35(3), 35(4) or 35AA(2) of the *Administrative Appeals Tribunal Act 1975*;

#### **6 Section 8**

Insert:

*emergency disclosure* means a public interest disclosure covered by item 3 of the table in subsection 26(1).

*external disclosure* means a public interest disclosure covered by item 2 of the table in subsection 26(1).

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

#### **7 Section 22**

After “public official who is”, insert “, or has been,”.

#### **8 Section 25 (paragraph beginning “Broadly speaking”)**

After “public official,”, insert “or a former public official,”.

**9 Paragraph 26(1)(c)**

Omit “met:”, substitute “met.”.

**10 Subsection 26(1) (cell at table item 1, column 3)**

Repeal the cell, substitute:

- (a) The information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct.
- (b) The disclosure is not made in the course of performing the discloser’s ordinary functions as a public official.

**11 Paragraph 29(1)(c)**

Omit “contract:”, substitute “contract.”.

**12 Subparagraph 30(2)(b)(i)**

Omit “; or”, substitute “; and”.

**13 Subparagraph 30(2)(b)(ii)**

Omit “who”.

**14 Subsection 30(3)**

Omit “a prescribed authority” (wherever occurring), substitute “an agency”.

**15 At the end of section 30**

Add:

- (4) However, a *Commonwealth contract* does not include a grant covered by an instrument made under section 105C of the *Public Governance, Performance and Accountability Act 2013* (instruments relating to grants).

**16 Section 34**

Omit “conduct:”, substitute “conduct.”.

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**17 Paragraph 67(1)(a)**

Omit “public interest disclosure covered by item 4 of the table in subsection 26(1) (a *legal practitioner disclosure*)”, substitute “legal practitioner disclosure”.

**18 Section 77**

Repeal the section, substitute:

**77 Delegations**

- (1) The principal officer of an agency may, by writing, delegate any or all of the principal officer’s functions or powers under this Act to a public official who belongs to the agency.

Example: The Ombudsman and the IGIS are the principal officers of their respective agencies. Under this subsection, the Ombudsman, or the IGIS, may delegate any of their respective functions or powers to a public official who belongs to the relevant agency (see section 69).

- (2) A person exercising functions or powers under a delegation under this section must comply with any directions of the principal officer who delegated the function or power.

**19 After paragraph 78(1)(c)**

Insert:

or (ca) a person assisting:

- (i) a principal officer of an agency; or
- (ii) a delegate of the principal officer;

**20 At the end of subsection 78(1)**

Add:

- ; or (f) in the case of a person assisting a principal officer or delegate, as mentioned in paragraph (ca)—in assisting the principal officer or delegate in doing anything mentioned in paragraph (d) or (e).

**21 Section 82A**

Repeal the section, substitute:

**82A Review of operation of Act**

- (1) The Minister must cause a review to be undertaken of the operation of this Act.
- (2) The review must be conducted as soon as practicable after the end of 5 years after this section commences.
- (3) The Minister must cause a written report about the review to be prepared.
- (4) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

## **Schedule 3—Application and saving provisions for Schedules 1 and 2**

### **1 Definitions for Schedule 3**

In this Schedule:

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

*commencement* means the day this Schedule commences.

### **2 Application of amendments—general rule**

Subject to this Schedule, the amendments of the Act made by Schedules 1 and 2 to this Act apply in relation to:

- (a) a disclosure made on or after commencement; and
- (b) conduct that is the subject of such a disclosure, whether the conduct occurs (or is alleged to have occurred) before, on or after commencement.

### **3 Protection of disclosers and witnesses**

The amendments of the Act made by Part 3 of Schedule 1 to this Act apply in relation to:

- (a) engaging in conduct on or after commencement that constitutes:
  - (i) taking a reprisal against a person within the meaning of section 13 of the Act (as amended by that Part); or
  - (ii) an offence against section 19 of the Act (as substituted by that Part); and
- (b) a disclosure made, or believed or suspected to have been made, before, on or after commencement, if the disclosure (or belief or suspicion about the disclosure) is the reason, or part of the reason, for engaging in such conduct.

### **4 Six-monthly reports by the Ombudsman**

Section 76 of the Act (as amended by Part 4 of Schedule 1 to this Act) and section 76A of the Act (as inserted by that Part) apply in relation to the information covered by paragraphs 76(2)(a) to (d) of the Act based on the operation of the Act:

- (a) if commencement is between 1 January and 30 June in a calendar year—on and after 1 July in that year; or
- (b) if commencement is between 1 July and 31 December in a calendar year—on and after 1 January in the following calendar year.

Note: Section 76 of the Act provides for annual reports by the Ombudsman. Section 76A of the Act provides for six-monthly reports by the Ombudsman.

## **5 Machinery of government changes**

If Subdivision D of Division 3 of Part 4 of the Act (as added by Part 6 of Schedule 1 to this Act) applies in relation to a machinery of government change:

- (a) the Subdivision applies in relation to a disclosure whether the disclosure is made before, on or after commencement; and
- (b) the Subdivision applies in relation to conduct that is (or may be) the subject of a disclosure whether the conduct occurs (or is alleged to have occurred) before, on or after commencement; and
- (c) if the disclosure was made on or after commencement—the amendments of the Act made by Schedules 1 and 2 to this Act apply in relation to the disclosure, whether the conduct that is the subject of the disclosure occurred (or is alleged to have occurred) before, on or after commencement; and
- (d) if the disclosure was made before commencement, those amendments (apart from the amendments made by Part 6 of Schedule 1 to this Act) do not apply in relation to the disclosure.

Note: For *machinery of government change*, see section 73A of the Act.

## **6 Delegations**

- (1) Despite the repeal of section 77 (delegations) of the Act by Schedule 2 to this Act, a delegation under that section that was in force immediately before commencement continues in force on and after commencement as if it had been made under that section as substituted by that Schedule.
- (2) Subsection 77(2) of the Act (as that Act is amended by Schedule 2 to this Act) applies, on and after commencement, in relation to a delegation that:

- (a) continues in force under subitem (1); or
- (b) is made on or after commencement.

**Schedule 4** Amendments contingent on the National Anti-Corruption Commission legislation

**Part 1** Repeal of items from the National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022 if this Act commences first

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## **Schedule 4—Amendments contingent on the National Anti-Corruption Commission legislation**

**Part 1—Repeal of items from the National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022 if this Act commences first**

*National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022*

**1 Items 163, 171 to 174 and 182 of Schedule 1**

Repeal the items.



**Part 2—Amendments that commence if the National  
Anti-Corruption Commission (Consequential  
and Transitional Provisions) Act 2022  
commences before this Act**

*Public Interest Disclosure Act 2013*

**2 Subsection 50(4)**

After “this section”, insert “(other than subsection (4A))”.

**Schedule 4** Amendments contingent on the National Anti-Corruption Commission legislation

**Part 3** Amendments that commence after this Act and the National Anti-Corruption Commission Act 2022 commence

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## **Part 3—Amendments that commence after this Act and the National Anti-Corruption Commission Act 2022 commence**

### *National Anti-Corruption Commission Act 2022*

#### **3 Subsections 29(1) and (2)**

Repeal the subsections, substitute:

- (1) A person (the *first person*) *takes a reprisal* against another person (the *second person*) if:
  - (a) the first person engages in conduct that:
    - (i) results in detriment to the second person; or
    - (ii) consists of, or results in, a threat to cause detriment to the second person; and
  - (b) when the conduct is engaged in, the first person believes or suspects that the second person, or any other person:
    - (i) has made a NACC disclosure; or
    - (ii) may have made a NACC disclosure; or
    - (iii) proposes to make a NACC disclosure; or
    - (iv) could make a NACC disclosure; and
  - (c) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.
- (2) *Detriment* includes (without limitation) any of the following:
  - (a) dismissal of an employee;
  - (b) injury of an employee in their employment;
  - (c) alteration of an employee's position to their disadvantage;
  - (d) discrimination between an employee and other employees of the same employer;
  - (e) harassment or intimidation of a person;
  - (f) harm or injury to a person, including psychological harm;
  - (g) damage to a person's property;
  - (h) damage to a person's reputation;
  - (i) damage to a person's business or financial position;

- (j) any other damage to a person.

#### **4 Section 30**

Repeal the section, substitute:

### **30 Offences—reprisals in relation to NACC disclosures**

#### *Taking a reprisal—by causing detriment*

- (1) A person (the **first person**) commits an offence in relation to another person (the **second person**) if:
- (a) the first person engages in conduct; and
  - (b) engaging in the conduct results in detriment to the second person; and
  - (c) when the conduct is engaged in, the first person believes or suspects that the second person, or any other person:
    - (i) has made a NACC disclosure; or
    - (ii) may have made a NACC disclosure; or
    - (iii) proposes to make a NACC disclosure; or
    - (iv) could make a NACC disclosure; and
  - (d) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.

Penalty: Imprisonment for 2 years.

#### *Taking a reprisal—by a threat to cause detriment*

- (2) A person (the **first person**) commits an offence in relation to another person (the **second person**) if:
- (a) the first person engages in conduct; and
  - (b) engaging in the conduct consists of, or results in, a threat to cause detriment to the second person; and
  - (c) the first person is reckless as to whether the second person fears that the threat would be carried out; and
  - (d) when the conduct is engaged in, the first person believes or suspects that the second person, or any other person:
    - (i) has made a NACC disclosure; or
    - (ii) may have made a NACC disclosure; or

**Schedule 4** Amendments contingent on the National Anti-Corruption Commission legislation

**Part 3** Amendments that commence after this Act and the National Anti-Corruption Commission Act 2022 commence

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- (iii) proposes to make a NACC disclosure; or
- (iv) could make a NACC disclosure; and
- (e) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.

Penalty: Imprisonment for 2 years.

- (3) Subsection (2) applies whether or not the threat mentioned in paragraph (2)(b) is:
- (a) express or implied; or
  - (b) conditional or unconditional.

*Exception—reasonable administrative action*

- (4) Subsections (1) and (2) do not apply if the conduct engaged in by the first person is administrative action that is reasonable to protect the second person from detriment.

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

*No requirement to prove matters related to a NACC disclosure*

- (5) In a prosecution for an offence against this section, it is not necessary to prove that any person:
- (a) has made a NACC disclosure; or
  - (b) may have made a NACC disclosure; or
  - (c) proposes to make a NACC disclosure; or
  - (d) could make a NACC disclosure.

Note 1: The offences against subsections (1) and (2) relate to whether the first person has taken a reprisal (within the meaning of section 29) against the second person.

Note 2: The offence against subsection (1) relates to a reprisal that consists of causing detriment to another person. The offence against subsection (2) relates to a reprisal that involves a threat to cause detriment to another person.

Note 3: For actions that constitute a *detriment*, see subsection 29(2).

Note 4: Proof of intention, knowledge or recklessness will satisfy a fault element of recklessness (see subsection 5.4(4) of the *Criminal Code*).

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## **5 Application provision**

The amendments of the *National Anti-Corruption Commission Act 2022* made by this Part apply in relation to:

- (a) engaging in conduct on or after the commencement of this Part that constitutes:
  - (i) taking a reprisal against a person within the meaning of section 29 of that Act (as amended by this Part); or
  - (ii) an offence against section 30 of that Act (as substituted by this Part); and
- (b) a NACC disclosure made, or believed or suspected to have been made, before, on or after the commencement of this Part, if the disclosure (or belief or suspicion about the disclosure) is the reason, or part of the reason, for engaging in such conduct.

**Schedule 4** Amendments contingent on the National Anti-Corruption Commission legislation

**Part 4** Amendments that commence after this Act and the National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022 commence

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**Part 4—Amendments that commence after this Act and the National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022 commence**

*Public Interest Disclosure Act 2013*

**6 Section 7 (paragraph beginning “There are 4 kinds”)**

Omit “4”, substitute “5”.

**7 Section 7 (at the end of the paragraph beginning “There are 4 kinds”)**

Add:

; (e) a NACC disclosure.

**8 Section 7 (paragraph beginning “The protection provisions”)**

Omit “or legal practitioner”, substitute “, legal practitioner or NACC disclosure”.

**9 Section 8**

Insert:

*corruption issue* has the same meaning as in the *National Anti-Corruption Commission Act 2022*.

**10 Subsection 43(3) (note)**

Omit “Note”, substitute “Note 1”.

**11 At the end of subsection 43(3)**

Add:

Note 2: If the disclosure is subject to a stop action direction under the NACC Act, it cannot be allocated under this section (see subsections (11) and (12)).

## **12 After subsection 43(4)**

Insert:

- (4A) However, the authorised officer cannot be satisfied under paragraph (4)(b) that the conduct disclosed would be more appropriately investigated under another law or power only because the conduct disclosed raises a corruption issue.

Note: Disclosures that raise a corruption issue can continue to be handled in accordance with this Part, subject to a stop action direction under the NACC Act. See section 39 (effect of referral on continued actions) of the *National Anti-Corruption Commission Act 2022*.

## **13 At the end of subsection 43(11)**

Add:

- ; (c) to the extent that a stop action direction under the NACC Act prevented the allocation of the disclosure—the day when the authorised officer becomes aware that the direction no longer applies.

## **14 At the end of section 43**

Add:

*Stop action direction under the NACC Act*

- (12) This section has effect subject to any stop action direction under the NACC Act.

Note: An authorised officer who is prevented from allocating a disclosure by such a direction must notify the Ombudsman or the IGIS, as relevant (see section 44B).

## **15 After section 44A**

Insert:

**Schedule 4** Amendments contingent on the National Anti-Corruption Commission legislation

**Part 4** Amendments that commence after this Act and the National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022 commence

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#### **44B Non-allocation of disclosure subject to stop action direction under the NACC Act**

##### *Scope*

- (1) This section applies if a stop action direction under the NACC Act prevents an authorised officer of an agency from allocating some or all of a disclosure under section 43.

##### *Notice of details relating to disclosure*

- (2) The authorised officer must, as soon as reasonably practicable, give written notice of the matters in subsection (3) to:
  - (a) the Ombudsman (unless paragraph (b) of this subsection applies); or
  - (b) the IGIS, if the disclosure concerns conduct relating to:
    - (i) an intelligence agency; or
    - (ii) the IGIS; or
    - (iii) ACIC or the Australian Federal Police in relation to that agency's intelligence functions.
- (3) The following are the matters for the purposes of subsection (2):
  - (a) the information that was disclosed;
  - (b) the conduct disclosed;
  - (c) if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the Ombudsman or the IGIS, as relevant, being informed—the discloser's name and contact details;
  - (d) the stop action direction under the NACC Act that prevents allocation of some or all of the disclosure.

#### **16 Subsection 45(2)**

Omit "(11)", substitute "(12)".

#### **17 Subsection 47(5)**

Renumber as subsection (4).

#### **18 Paragraph 48(1)(ga)**

After "power", insert "(but see subsection (1A))".

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**19 After subsection 48(1)**

Insert:

- (1A) However, the principal officer cannot be satisfied under paragraph (1)(ga) that the conduct disclosed would be more appropriately investigated under another law or power only because the conduct disclosed raises a corruption issue.

Note: Disclosures that raise a corruption issue can continue to be handled in accordance with this Part, subject to a stop action direction under the NACC Act. See section 39 (effect of referral on continued actions) of the *National Anti-Corruption Commission Act 2022*.

**20 Subsection 50(4A)**

Omit “inform”, substitute “give written notice”.

**21 Subsection 50A(3) (the subsection (3) inserted by item 181 of Schedule 1 to the *National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022*)**

Repeal the subsection.

**22 At the end of section 50A**

Add:

- (4) If a stop action direction under the NACC Act prevents the principal officer of the agency from investigating, or further investigating, the disclosure under this Division, the principal officer must, as soon as reasonably practicable, give written notice of the stop action direction to:
- (a) the Ombudsman (unless paragraph (b) applies); or
  - (b) the IGIS, if the disclosure concerns conduct relating to:
    - (i) an intelligence agency; or
    - (ii) the IGIS; or
    - (iii) ACIC or the Australian Federal Police in relation to that agency’s intelligence functions.

**23 After paragraph 52(1)(c)**

Insert:

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**Schedule 4** Amendments contingent on the National Anti-Corruption Commission legislation

**Part 4** Amendments that commence after this Act and the National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022 commence

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; or (d) to the extent that a stop action direction under the NACC Act prevented the investigation—the day when the principal officer becomes aware that the direction no longer applies.

#### **24 Paragraph 56(4)(b)**

Repeal the paragraph, substitute:

- (b) if the investigator suspects on reasonable grounds that the relevant information raises a corruption issue (within the meaning of the *National Anti-Corruption Commission Act 2022*) and:
  - (i) the corruption issue has been referred under that Act to the person or agency mentioned in subsection (4A); or
  - (ii) that person or agency is already aware of the issue.

#### **25 After subsection 56(4)**

Insert:

- (4A) For the purposes of paragraph (4)(b), the person or agency is:
  - (a) the National Anti-Corruption Commissioner; or
  - (b) the IGIS, if the corruption issue concerns:
    - (i) an intelligence agency; or
    - (ii) ACIC or the Australian Federal Police in relation to that agency's intelligence functions.

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[*Minister's second reading speech made in—  
House of Representatives on 30 November 2022  
Senate on 6 March 2023*]

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(137/22)