



# Public Service Amendment (Public Interest Disclosure and Other Matters) Regulation 2013

## Select Legislative Instrument No. 276, 2013

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I, Quentin Bryce AC CVO, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Public Service Act 1999*.

Dated 12 December 2013

Quentin Bryce  
Governor-General

By Her Excellency's Command

Eric Abetz  
Minister Assisting the Prime Minister for the Public Service

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OPC60322 - A



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## Contents

1	Name of regulation .....	1
2	Commencement .....	1
3	Authority .....	1
4	Schedule(s) .....	1
<b>Schedule 1—Amendments commencing day after registration</b>		<b>2</b>
	<i>Public Service Regulations 1999</i>	2
<b>Schedule 2—Amendments commencing the same time as sections 3 to 83 of the Public Interest Disclosure Act 2013 commence</b>		<b>3</b>
	<i>Public Service Regulations 1999</i>	3
<b>Schedule 3—Amendments commencing 12 March 2014</b>		<b>8</b>
	<i>Public Service Regulations 1999</i>	8



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## 1 Name of regulation

This regulation is the *Public Service Amendment (Public Interest Disclosure and Other Matters) Regulation 2013*.

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this regulation not elsewhere covered by this table	The day after this regulation is registered.	
2. Schedule 1	The day after this regulation is registered.	
3. Schedule 2	At the same time as sections 3 to 83 of the <i>Public Interest Disclosure Act 2013</i> commence.	
4. Schedule 3	12 March 2014.	12 March 2014

## 3 Authority

This regulation is made under the *Public Service Act 1999*.

## 4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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No. 276, 2013      *Public Service Amendment (Public Interest Disclosure and Other Matters) Regulation 2013*      1  
OPC60322 - A

## **Schedule 1—Amendments commencing day after registration**

### ***Public Service Regulations 1999***

#### **1 After subregulation 5.32(3)**

Insert:

- (3A) If, after the recommendation:
- (a) the Agency Head considers making a finding of a breach of the Code of Conduct; and
  - (b) the Agency Head had not made the finding before the recommendation was made; and
  - (c) the finding was not mentioned in the recommendation;
- the Agency Head must comply with the procedures established under subsection 15(3) of the Act before deciding whether to make the finding.
- (3B) If, after the recommendation:
- (a) the Agency Head considers imposing a sanction, for breach of the Code of Conduct, that the Agency Head had not imposed before the recommendation was made; and
  - (b) the sanction was not mentioned in the recommendation;
- the Agency Head must comply with the procedures established under subsection 15(3) of the Act before deciding whether to impose the sanction.

## **Schedule 2—Amendments commencing the same time as sections 3 to 83 of the Public Interest Disclosure Act 2013 commence**

### ***Public Service Regulations 1999***

#### **1 Division 2.2**

Repeal the Division.

#### **2 Part 6 (note to heading)**

Repeal the note, substitute:

Note: Other functions of the Australian Public Service Commissioner are set out in the following regulations:

- (a) regulation 3.5 (engagement of non-SES employees);
- (b) regulation 9.2 (use and disclosure of personal information).

#### **3 After regulation 6.1A**

Insert:

#### **6.1B Australian Public Service Commissioner's functions—inquiries into public interest disclosures that relate to alleged breaches of the Code of Conduct (Act s41(2)(o))**

- (1) For paragraph 41(2)(o) of the Act, this regulation relates to the function of the Australian Public Service Commissioner to inquire into a public interest disclosure (the *disclosure*), to the extent that the disclosure relates to one or more alleged breaches of the Code of Conduct.

##### *Inquiry into disclosure*

- (2) The Australian Public Service Commissioner may inquire into the disclosure if the Australian Public Service Commissioner is satisfied that it would be inappropriate for the discloser to make the disclosure to an Agency Head.

- (3) The Australian Public Service Commissioner may inquire into the disclosure if the discloser:
- (a) has made the disclosure to an Agency Head; and
  - (b) is not satisfied with the outcome that followed the disclosure.

*Decision to decline to inquire*

- (4) The Australian Public Service Commissioner may decide to decline to inquire into the disclosure, or to decline to inquire further, if the Australian Public Service Commissioner concludes that conducting or continuing the inquiry would not be justified in all the circumstances.

Examples: The circumstances that exist in a particular case may include some or all of the following:

- (a) the disclosure has been, or is being, considered by the Merit Protection Commissioner;
- (b) the disclosure would be dealt with more appropriately by another means;
- (c) the disclosure is vexatious, frivolous, misconceived, or lacking in substance;
- (d) the discloser has provided insufficient detail;
- (e) the disclosure does not to any extent concern serious disclosable conduct;
- (f) it would not be practical to inquire, or inquire further, because the discloser has not consented to the use or disclosure of identifying information about the discloser.

*Process of inquiry*

- (5) If the Australian Public Service Commissioner inquires into the disclosure, the Australian Public Service Commissioner must:
- (a) consider, having regard to all the circumstances, whether to give a person about whom the disclosure has been made an opportunity to be heard in relation to the disclosure; and
  - (b) take reasonable steps to report the outcome of the inquiry to the discloser and the relevant Agency Head.

Note: Inquiring into public interest disclosures is a function of the Australian Public Service Commissioner. Section 72A of the Act deals with circumstances in which the Australian Public Service Commissioner may make a record of, disclose or otherwise use certain information for the purposes of, or in connection with, the performance of his or her functions.



If the Australian Public Service Commissioner gives a person about whom a disclosure has been made an opportunity to be heard in relation to the disclosure, the Australian Public Service Commissioner may give the person information identifying the discloser to the extent the Australian Public Service Commissioner considers appropriate in the circumstances.

#### **4 Subregulation 7.1(3) (note)**

Repeal the note.

#### **5 At the end of Division 7.1**

Add:

##### **7.1A Merit Protection Commissioner's functions—inquiries into public interest disclosures that relate to alleged breaches of the Code of Conduct (Act s50(1)(a))**

- (1) For paragraph 50(1)(a) of the Act, this regulation relates to the function of the Merit Protection Commissioner to inquire into a public interest disclosure (the *disclosure*), to the extent that the disclosure relates to one or more alleged breaches of the Code of Conduct.

###### *Inquiry into disclosure*

- (2) The Merit Protection Commissioner may inquire into the disclosure if the Merit Protection Commissioner is satisfied that it would be inappropriate for the discloser to make the disclosure to an Agency Head.
- (3) The Merit Protection Commissioner may inquire into the disclosure if the discloser:
  - (a) has made the disclosure to an Agency Head; and
  - (b) is not satisfied with the outcome that followed the disclosure.

###### *Decision to decline to inquire*

- (4) The Merit Protection Commissioner may decide to decline to inquire into the disclosure, or to decline to inquire further, if the Merit Protection Commissioner concludes that conducting or continuing the inquiry would not be justified in all the circumstances.

**Schedule 2** Amendments commencing the same time as sections 3 to 83 of the Public Interest Disclosure Act 2013 commence

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Examples: The circumstances that exist in a particular case may include some or all of the following:

- (a) the disclosure has been, or is being, considered by the Australian Public Service Commissioner;
- (b) the disclosure would be dealt with more appropriately by another means;
- (c) the disclosure is vexatious, frivolous, misconceived, or lacking in substance;
- (d) the discloser has provided insufficient detail;
- (e) the disclosure does not to any extent concern serious disclosable conduct;
- (f) it would not be practical to inquire, or inquire further, because the discloser has not consented to the use or disclosure of identifying information about the discloser.

*Process of inquiry*

- (5) If the Merit Protection Commissioner inquires into the disclosure, the Merit Protection Commissioner must:
- (a) consider, having regard to all the circumstances, whether to give a person about whom the disclosure has been made an opportunity to be heard in relation to the disclosure; and
  - (b) take reasonable steps to report the outcome of the inquiry to the discloser and the relevant Agency Head.

Note: Inquiring into public interest disclosures is a function of the Merit Protection Commissioner. Section 72B of the Act deals with circumstances in which the Merit Protection Commissioner may make a record of, disclose or otherwise use certain information for the purposes of, or in connection with, the performance of his or her functions.

If the Merit Protection Commissioner gives a person about whom a disclosure has been made an opportunity to be heard in relation to the disclosure, the Merit Protection Commissioner may give the person information identifying the discloser to the extent the Merit Protection Commissioner considers appropriate in the circumstances.

## 6 Dictionary

Insert:

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

***public interest disclosure*** has the same meaning as in the *Public Interest Disclosure Act 2013*.

**7 Dictionary (definition of *whistleblower*)**

Repeal the definition.

**8 Dictionary (definition of *whistleblower report*)**

Repeal the definition.

## **Schedule 3—Amendments commencing 12 March 2014**

### ***Public Service Regulations 1999***

#### **1 Subregulations 9.2(7) and (8)**

Repeal the subregulations, substitute:

- (7) Use or disclosure of personal information under this regulation is authorised for the purposes of Australian Privacy Principle 6.2(b) under the *Privacy Act 1988*.