



Parliamentary Service Amendment (Public Interest Disclosure and Other Matters) Determination 2014

We, Senator the Hon John Hogg, President of the Senate, and the Hon Bronwyn Bishop MP, Speaker of the House of Representatives, make the following determination under the *Parliamentary Service Act 1999*.

Dated 26 March 2014

Senator the Hon John Hogg
President of the Senate

The Hon Bronwyn Bishop MP
Speaker of the House of Representatives

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1 Name of determination

This determination is the *Parliamentary Service Amendment (Public Interest Disclosure and Other Matters) Determination 2014*.

2 Commencement

Each provision of this determination 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 determination not elsewhere covered by this table	The day after this determination is registered.	
2. Schedule 1	The day after this determination is registered.	
3. Schedule 2	At the same time as sections 3 to 83 of the <i>Public Interest Disclosure Act 2013</i> commence.	15 January 2014
4. Schedule 3	12 March 2014.	12 March 2014

3 Authority

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments commencing day after registration

Parliamentary Service Determination 2013

1 Subclause 44(1)

Repeal the subclause, substitute:

- (1) If a circumstance mentioned in subclause (2), (3) or (4) applies, a Secretary may give a Parliamentary Service employee in the Secretary's Department a written direction to do either or both of the following:
 - (a) undergo an examination by a nominated medical practitioner, either at a time, or within a period, specified by the Secretary in the direction;
 - (b) give the Secretary a report of the examination.

2 After subclause 104(3)

Insert:

- (3A) If, after the recommendation:
 - (a) the Secretary considers making a finding of a breach of the Code of Conduct; and
 - (b) the Secretary had not made the finding before the recommendation was made; and
 - (c) the finding was not mentioned in the recommendation;the Secretary 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 Secretary considers imposing a sanction, for breach of the Code of Conduct, that the Secretary had not imposed before the recommendation was made; and
 - (b) the sanction was not mentioned in the recommendation;the Secretary 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

Parliamentary Service Determination 2013

1 After Part 10

Insert:

Part 10A—Commissioner

112A Commissioner’s functions—inquiries into public interest disclosures that relate to alleged breaches of the Code of Conduct

- (1) For paragraph 40(1)(c) of the Act, this clause relates to the function of the 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 Commissioner may inquire into the disclosure if the Commissioner is satisfied that it would be inappropriate for the discloser to make the disclosure to a Secretary.
- (3) The Commissioner may inquire into the disclosure if the discloser:
- (a) has made the disclosure to a Secretary; and
 - (b) is not satisfied with the outcome that followed the disclosure.

Decision to decline to inquire

- (4) The Commissioner may decide to decline to inquire into the disclosure, or to decline to inquire further, if the 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 Commissioner inquires into the disclosure, the 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 Secretary.

Note: Inquiring into public interest disclosures is a function of the Commissioner. Section 65AA of the Act deals with circumstances in which the 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 Commissioner gives a person about whom a disclosure has been made an opportunity to be heard in relation to the disclosure, the Commissioner may give the person information identifying the discloser to the extent the Commissioner considers appropriate in the circumstances.

2 Subclause 113(2) (note)

Repeal the note.

3 At the end of Division 1 of Part 11

Add:

113A Merit Protection Commissioner's functions—inquiries into public interest disclosures that relate to alleged breaches of the Code of Conduct

- (1) For paragraph 48(1)(a) of the Act, this clause 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 a Secretary.
- (3) The Merit Protection Commissioner may inquire into the disclosure if the discloser:
 - (a) has made the disclosure to a Secretary; 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.

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 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 Secretary.

Note: Inquiring into public interest disclosures is a function of the Merit Protection Commissioner. Section 65AB 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.

4 Part 12

Repeal the Part.

5 Schedule 1

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*.

6 Schedule 1 (definition of *whistleblower*)

Repeal the definition.

7 Schedule 1 (definition of *whistleblower report*)

Repeal the definition.

Schedule 3—Amendments commencing 12 March 2014

Parliamentary Service Determination 2013

1 Subclauses 147(7) and (8)

Repeal the subclauses, substitute:

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