

# Review of the Commonwealth Public Interest Disclosure Legislation

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Public Interest Disclosures Steering Committee

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## INTRODUCTION

In meeting its obligations under the [Public Interest Disclosures Act 1994](#) (the NSW Act) the Public Interest Disclosures Steering Committee (the Steering Committee) has reviewed various aspects of the recently enacted Commonwealth [Public Interest Disclosures Act 2013](#) (the Commonwealth Act). This review focused on whether there are any provisions or concepts in the Commonwealth Act that could usefully be incorporated into the NSW Act.

The review compared the provisions of the two Acts to identify variations in mechanisms and terminology. These variations were then assessed to determine which approach would best promote the object of the NSW Act or would better align with recommendations arising out of Australian and International research into best practice internal reporter management.

Arising out of this review, the Steering Committee recommends that consideration be given to the following changes to the NSW Act:

1. Expanding s.3 (1) to include the overarching objective “...to promote the integrity and accountability of the ... public sector...” (Commonwealth Act, s.6).
2. Amending the definition of “public official” in s.4A to provide that disclosures can also be made by former public officials about matters they became aware of in their former capacity as public officials (s.26 (1)(a), Commonwealth Act).
3. Clearly stating that a public interest disclosure (PID) may be made orally or in writing, may be made anonymously, and that a reporter does not have to assert that the disclosure is made under the PID Act (s.28, Commonwealth Act).
4. Amending ss.8 & 14 to provide that a disclosure can be made to a supervisor, and that the supervisor is obliged to pass on any such reports in accordance with the authority’s internal reporting policy (ss.26 & 60A, Commonwealth Act).
5. Providing that conduct related to a “subsidiary agency” is taken for the purposes of the Act to relate to the “parent agency” (s.35 (2), Commonwealth Act).
6. Amending s.12A to reflect the Police Integrity Commission’s jurisdiction to receive disclosures relating to the conduct of NSW Police Force administrative officers and NSW Crime Commission officers.
7. Adding a note to s.20B to make explicit that a court may grant an injunction to issue an apology, restrain termination or mandate reinstatement.
8. Providing in Part 3 that a court cannot order the applicant to pay costs incurred in any proceedings relating to compensation or injunction unless the proceedings were instituted vexatiously or without reasonable cause, or the applicant’s unreasonable act or omission caused the other party to incur the costs (s.18, Commonwealth Act).
9. Expanding s.6E to provide that the responsibilities of principal officers of public authorities include: appointing a sufficient number of disclosure officers to ensure they are readily accessible by public officials belonging to the authority; and ensuring that appropriate action is taken in response to recommendations in investigation reports (s.59 (3), Commonwealth Act).

The Steering Committee is mindful in making these recommendations of the importance of a level of certainty among public authorities and public officials around how this important legislation will operate. This can be supported by avoiding frequent, piecemeal amendments to the NSW Act. As such, the above recommendations for change may be best considered as part of the broader review required by the NSW Act in several years, or an earlier wholesale review if required.

## BACKGROUND

Section 31B of the NSW Act requires that the Steering Committee review any legislation of the Commonwealth that is enacted in response to the 2009 report *Whistleblower protection: A comprehensive scheme for the Commonwealth public sector* of the House of Representatives Standing Committee on Legal and Constitutional Affairs.

The Commonwealth [Public Interest Disclosures Act 2013](#) received assent on 16 July 2013, and this review is required to be conducted within six months of that date (i.e. by 16 January 2014). Arising out of the review, the Steering Committee is required to provide the Premier with a report on the outcome of the review and any recommendations for reform of the NSW Act.

## METHODOLOGY

Given that this review is required to be conducted immediately after the Commonwealth Act is passed and the short time period in which the review must be conducted and a report prepared and submitted to the Premier, it was clearly not intended by Parliament that the review include any assessment of the actual implementation of the Commonwealth Act. The review has sought to identify any provisions or concepts in the Commonwealth Act that could usefully be incorporated into the NSW Act. In doing so, the review focussed on:

1. A comparison of the Commonwealth Act against the NSW Act to identify significant areas where the two diverge in either approach or terminology.
2. Consideration as to whether the inclusion of any such provisions of the Commonwealth Act into the NSW Act would be likely to better promote the object of the NSW Act, i.e. “... *to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration, serious and substantial waste, government information contravention and local government pecuniary interest contravention in the public sector ...*”.
3. A comparison of the key differences in the Commonwealth Act against the suggestions set out in ‘*Best-practice whistleblowing legislation for the public sector: the key principles*’.<sup>1</sup>
4. A review of the form of words used in equivalent provisions of both Acts to determine which were better expressed in terms of simplicity and clarity.
5. The identification of opportunities for harmonisation of legislation, particularly if this would promote consistency in guidelines, advice and training provided to those contemplating making disclosures and those responsible for implementing the legislation.

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<sup>1</sup> Brown, AJ, Latimer, P, McMillan, J and Wheeler, C 2008, ‘Best-practice whistleblowing legislation for the public sector: the key principles’, [Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations](#), ANU E Press, Canberra, pp.261–288.

## OBSERVATIONS

The Steering Committee has identified where the Commonwealth Act provides a good model, as well as recognising where the NSW Act has the best approach.

### ***What are the objects of the Acts?***

The content of the object provisions of both Acts is largely similar, however where the NSW Act refers to its object being to “... *encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration, serious and substantial waste, government information contravention and local government pecuniary interest contravention in the public sector ...*” (s.3 (1)), the Commonwealth Act contains an additional overarching objective “... *to promote the integrity and accountability of the Commonwealth public sector...*” (s.6).

The Steering Committee believes that this terminology emphasises the values that guide the legislation and that the object of the NSW Act should be expanded in a similar way. The Steering Committee notes that it should not replace the more specific objectives already provided for in s.3 (1) of the NSW Act.

**Recommendation 1.** That s.3 (1) of the NSW Act be expanded to including the overarching objective “...*to promote the integrity and accountability of the ... public sector...*” (Commonwealth Act, s.6).

### ***What disclosures are protected?***

#### *Conduct that is the subject of a disclosure*

The Commonwealth Act lists a broad range of “*disclosable conduct*”. In addition to conduct covered by the NSW Act, s.29 of the Commonwealth Act provides protection for disclosures about conduct that:

- contravenes a law of the Commonwealth, a State, a Territory, or a foreign country
- is scientific misconduct
- unreasonably results in a, or results in or increases a risk of, danger to the health or safety of one or more persons
- results in a, or results in or increases a risk of, danger to the environment
- could, if proved, give reasonable grounds for disciplinary action against a public official.

The range of wrongdoing covered makes the Commonwealth Act very comprehensive. However, the Steering Committee prefers specificity and believes that the broad nature of conduct that may be the subject of a disclosure in the Commonwealth Act may result in misinterpretation compared with the categories of conduct presently defined in the NSW Act. More importantly, the NSW Act has been drafted to take into account the specific jurisdiction and functions of various investigating authorities. The NSW Act definitions of maladministration (s.11 (2)) and corrupt conduct (referencing ss.8–9 of the NSW [Independent Commission Against Corruption Act 1988](#)) appear to include many, if not all, of the matters able to be disclosed under the Commonwealth Act. For these reasons, the Steering Committee does not believe that expanding the categories of conduct that can be disclosed under the NSW Act is desirable.

#### *Threshold tests for protection*

The Commonwealth Act contains alternative threshold tests for protection — a disclosure must meet either a subjective test or an objective test, i.e. either the information in a disclosure “*tends to show*” one or more instances of the relevant conduct irrespective of the person’s belief, or the person making the disclosure “*believes on reasonable grounds that the information tends to show*” the relevant conduct (s.26).

The NSW Act sets out different tests depending on whether a disclosure is being made to a relevant public authority/official or investigating authority (ss.9A–14), or to a member of Parliament (MP) or

journalist (s.19). Disclosures to relevant public authorities/officials and investigating authorities are protected if they meet the subjective test (i.e. the belief of the person making the disclosure), but disclosures to MPs and journalists are only protected if they meet a narrower test (i.e. the person must have reasonable grounds for believing the disclosure is substantially true, and the disclosure must in fact be substantially true).

Similar to the NSW Act, the Commonwealth Act requires that an “*external disclosure*” has already been disclosed internally and either the discloser believes on reasonable grounds that the investigation or the response to the investigation was inadequate, or the investigation has not been completed within a set timeframe (s.26).

The Steering Committee notes that the current threshold tests for protection in NSW were introduced following careful consideration of the issue by Parliamentary committees and the Parliament, after input from many of the relevant NSW authorities involved in investigating PIDs, and should not be changed in the absence of evidence that they are inadequate. Lowering of the threshold for reports to MPs and journalists also has the potential to undermine and prejudice open or proposed investigations.

#### *Who can make a disclosure*

Both Acts cover current public officials, with the Commonwealth Act extending to a person who “*has been*” a public official (s.26 (1)(a)).

The Steering Committee believes that incorporating a similar provision in the NSW Act would promote its objectives by encouraging former public officials to come forward with information about serious wrongdoing. Former public officials may still face detrimental action in reprisal in the form of injury, damage or loss, and intimidation or harassment, or seek to rely on the protections in the NSW Act (i.e. offence of reprisal, compensation, injunctions, protection against other actions and the confidentiality of their identity).

The protection under the Act should, however, be limited to disclosures made about matters that came into the person’s knowledge in their former capacity as a public official.

**Recommendation 2.** That the definition of “*public official*” in s.4A of the NSW Act be amended to provide that disclosures can also be made by former public officials about matters they became aware of in their former capacity as public officials (s.26 (1)(a), Commonwealth Act).

#### *Clarification of common misunderstandings*

The Commonwealth Act provides clarity on whether disclosures can be made orally or in writing, anonymously and without the discloser asserting that they are making a PID (s.28). While the guidelines published by the NSW Ombudsman set out a clear view on each of these issues, a clear statement in the Act would remove any doubt. Reducing the burdens on public officials when they disclose wrongdoing will also facilitate the objective of the NSW Act.

**Recommendation 3.** That the NSW Act be amended to clearly state that a PID may be made orally or in writing, may be made anonymously, and that a reporter does not have to assert that the disclosure is made under the PID Act (s.28, Commonwealth Act).

## ***What avenues should be available for the making of disclosures?***

### *Supervisors as recipients of disclosures*

Both the Commonwealth and NSW Acts protect disclosures made to the principal officer of an agency/authority or a person who belongs to the agency/authority who is authorised/nominated to receive disclosures. However, under the Commonwealth Act disclosures can also be made to a supervisor of the discloser (s.26), who is then obliged to give the information to an authorised officer of the agency (s.60A).

Research has shown that most disclosures of wrongdoing within organisations are made to supervisors.<sup>2</sup> The Steering Committee believes the Commonwealth approach would better promote the objectives of the NSW Act.

This approach, combined with the recommendation above that disclosures can be made orally and without the discloser asserting that they are making a PID, will require supervisors to identify comments made in the course of a conversation as a possible PID. While this may present some challenges, the Steering Committee believes that all levels of management should have the knowledge and capacity to identify PIDs and take appropriate action. The training provided by the NSW Ombudsman will assist authorities in raising the awareness of their supervisory staff.

**Recommendation 4.** That ss.8 & 14 of the NSW Act be amended to provide that a disclosure can be made to a supervisor, and that the supervisor is obliged to pass on any such reports in accordance with the authority's internal reporting policy (ss.26 & 60A, Commonwealth Act).

### *Parent and subsidiary agencies*

Section 35 (2) of the Commonwealth Act makes clear that conduct related to a “*subsidiary agency*” — an unincorporated body such as a board, council, committee, sub-committee or other body that is established for the purpose of assisting or performing functions connected with another agency — is taken for the purposes of the Act to relate to the “*parent agency*”.

Including a similar provision in the NSW Act would help to clarify the definition of a public authority, particularly where authorities have established subsidiary entities. The Steering Committee also recognises the complexity of this proposal and that any such amendment to the NSW Act would need to consider the issue of state government clusters, that divisions of the public service are not legal entities with a parent/subsidiary relationship, Schedule 3 of the Government Information (Public Access) Regulation 2009 (NSW) that deems certain agencies parts of other agencies, and the changes being made by the [Government Sector Employment Act 2013](#) (NSW). For these reasons, the terminology of any provision is likely to differ from that used in the Commonwealth Act.

**Recommendation 5.** That the NSW Act provide that conduct related to a “*subsidiary agency*” is taken for the purposes of the Act to relate to the “*parent agency*” (s.35 (2), Commonwealth Act).

### *Investigating authorities as recipients of disclosures*

The Commonwealth Act provides for only two investigative agencies — the Commonwealth Ombudsman and the Inspector-General of Intelligence and Security in relation to intelligence information — although additional agencies can be prescribed as investigating agencies by “*PID rules*” (s.8) made by the Minister under s.83. A disclosure to these agencies is termed an “*internal disclosure*” (s.34). The Steering Committee believes that the NSW Act, in specifying the range of NSW investigating authorities to which a PID can be made, as well as their respective jurisdictions, is a better model.

<sup>2</sup> For example, Donkin, M, Smith, R and Brown, AJ 2008, ‘How do officials report? Internal and external whistleblowing’, [Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations](#), ANU E Press, Canberra, pp.83–108; Ethics Resource Centre 2012, *Inside the mind of a whistleblower: A supplemental report of the 2011 National Business Ethics Survey*, United States.

However, the Steering Committee also notes that the NSW Act, as it stands, does not adequately reflect the jurisdiction of the Police Integrity Commission (PIC). Section 12A of the NSW Act provides for public officials to make disclosures to the PIC which relate to conduct of a police officer. The PIC also has jurisdiction over NSW Police Force administrative officers and NSW Crime Commission officers. If a disclosure is about these groups the PIC rely on provisions relating to “*misdirected disclosures*” (s. 15).

**Recommendation 6.** That s.12A of the NSW Act be amended to reflect the PIC’s jurisdiction to receive disclosures relating to the conduct of NSW Police Force administrative officers and NSW Crime Commission officers.

#### *Other recipients of disclosures*

In addition to internal disclosures, s.26 of the Commonwealth Act provides for three other avenues of disclosure:

- External disclosures to “*any person other than a foreign public official*” once an internal disclosure has already been made.
- Emergency disclosures where “*the discloser believes on reasonable grounds that the information concerns a substantial and imminent danger to the health and safety of one or more persons or to the environment*”. A previous internal disclosure does not need to have been made if “*there are exceptional circumstances justifying the discloser’s failure to make such an internal disclosure*”.
- Legal practitioner disclosures “*made for the purpose of obtaining legal advice, or professional assistance*”.

The NSW Act states the circumstances in which disclosures can be made to MPs and journalists, those recipients most likely to receive disclosures outside public and investigating authorities. In relation to emergency disclosures, the Steering Committee is unable to contemplate any exceptional circumstances where a disclosure could not first be made to an appropriate investigating authority, even if the person is not comfortable with raising the issue within their own public authority for fear of reprisal. This approach ensures that public or investigating authorities have an opportunity to resolve the person’s concerns before a disclosure becomes more publicly known.

#### ***How should disclosures be dealt with?***

##### *Assessment and allocation of disclosures*

The obligations to assess and allocate disclosures are inferred in NSW, while the Commonwealth Act contains detailed provisions in relation to the assessment and allocation of disclosures (ss.26–45). The Steering Committee believes that in many respects this section of the legislation is overly lengthy and prescriptive, may create confusion for authorities and officials handling disclosures, and encourage legal challenges if there is a failure to comply. Alternative strategies such as greater promotion of the NSW Ombudsman guideline and templates for the assessment of PIDs may more effectively assist public authorities and officials with overcoming issues associated with the assessment of PIDs than prescriptive legislation.

##### *Investigation of disclosures*

The Commonwealth Act has more detailed provisions than the NSW Act in relation to the investigation of disclosures (ss.46–54). It requires the principal officer of an agency to investigate disclosures allocated to the agency (s.47), subject to a range of exceptions including that the disclosure is frivolous or vexatious, already being investigated, the discloser requests that it not be investigated or it is impractical to investigate (s.48). The Act does not define the nature or scope of what constitutes an investigation for the purposes of the Act — although the NSW Act definitions state that investigate “*includes inquire or audit*” (s.4). While the Commonwealth Act provides that an investigation under that

Act is to be conducted in a manner the principal officer believes is appropriate, the principal officer is required to comply with any standards determined by the Ombudsman relating to the conduct of investigations under the Act (s.53 & s.74). The way a disclosure is investigated (or a refusal to investigate) may be the subject of a complaint to the Ombudsman under the [Ombudsman Act 1976](#) (Cth) (s.46).

Some members of the Steering Committee have been involved in assessing the standard of numerous investigations undertaken by or on behalf of public authorities under the former *Protected Disclosures Act 1994* and the current NSW Act. While problems have been identified in some aspects of investigations (including the methodology used, the scope of the issues addressed and the provision of procedural fairness), there has not been a similar concern about the initiation of investigations into the allegations contained in disclosures identified by authorities to be PIDs. Having a flexible approach to investigating disclosures means that existing investigative processes and expertise are recognised and used appropriately.

The Commonwealth Act requires that investigations must be completed within 90 days after the disclosure is allocated to the agency, unless the Ombudsman agrees to an extension of the 90 day period (s.52). The Steering Committee believes that prescribing a time limit for an investigation, even if subject to modification with the agreement of an external oversight body, is problematic. The period of time taken in the investigation of a disclosure can be affected by a range of factors. These include, for example, the complexity of the issues alleged in the disclosure that require investigation, the opportunity that must reasonably be provided to subjects of disclosure to respond to proposed adverse comment arising out of the investigation, access to appropriate investigatory resources, the numbers of witnesses/parties that need to be interviewed as part of the investigation, and so on. The provision for the Ombudsman to extend such time periods is also problematic given the resources required by the Ombudsman to assess in each case whether such an extension was reasonably warranted.

The Commonwealth Act also contains provisions relating to the content of reports arising out of such investigations (s.51), and the standards that can be issued by the Ombudsman about the preparation of such reports (s.74 (1)(c)). It is not clear whether inclusion of such a provision in the NSW Act would be beneficial given that none of the members of the Steering Committee have identified such systemic deficiencies. The standard of investigations into allegations contained in a disclosure will continue to be monitored as part of the NSW Ombudsman's audits of authorities pursuant to s.6B of the PID Act.

#### ***What information should be given to reporters about the handling of their disclosures?***

Unlike the NSW Act, the Commonwealth Act provides that the principal officer and/or authorised officer of an agency must:

- notify a discloser if their disclosure has been allocated to an agency (s.44)
- notify a discloser whether the disclosure will be investigated and the reasons for that decision, "as soon as reasonably practicable" (s.50)
- provide a discloser with a copy of a redacted investigation report (s.51 (4)).

The NSW Act currently contains provisions relating to the information to be given to reporters (i.e. acknowledgement of the receipt of a disclosure within 45 days (s.6D (1A)), notification to the reporter within six months of the disclosure being made of the action taken or proposed (s.27)). The Steering Committee notes that what information is given to a reporter, and when, can have a significant impact on the perceived credibility of, and therefore the reporter's level of confidence in, the effectiveness and integrity of the process. There are often legitimate reasons why detailed information cannot or should not be provided to disclosers, such as the potential to risk prejudicing open or proposed investigations. The Steering Committee therefore does not support the prescriptive approach of the Commonwealth Act.



## ***What conduct is expected of those involved?***

### *Conduct of reporters*

The two Acts adopt a different approach to the provision of false and misleading information. While the NSW Act makes “*wilfully*” providing such information a criminal offence with a maximum penalty of 12 months imprisonment (s.28), the Commonwealth Act only removes the liability protections for “*knowingly*” providing false and misleading information (s.11). The Steering Committee does not believe that a similar provision is necessary in the NSW Act given the present requirement for disclosers to have an honest and reasonable belief that their information discloses wrongdoing in order to receive protections.

The Commonwealth Act also states that a discloser’s liability for their own misconduct is not affected by the Act, i.e. where a person discloses their own misconduct, the fact that it may be a PID does not affect their liability for the misconduct (s.12). The Steering Committee believes it is reasonable to assume that the taking of appropriate action to address misconduct by a reporter would not constitute detrimental action in reprisal for the making of a PID in breach of s.20 of the NSW Act. Other legislation, such as the *Crimes Act 1900*, would also adequately address these ‘liabilities’.

### *Conduct of public officials*

The Commonwealth Act places obligations on public officials to use their “*best endeavours to assist*” the principal officer of an agency in the conduct of an investigation under the Act, and to assist the Ombudsman in the performance of the Ombudsman’s functions under the Act (s.61). This obligation applies to all public officials, including public officials who make disclosures and public officials who are the subject of disclosures.

While supporting the policy intent, the Steering Committee does not believe that a legislative provision is necessary given that public officials have existing responsibilities in authorities’ policies and procedures as well as the broader requirements for ethical conduct outlined in the [Government Sector Employment Act 2013](#) (NSW). A provision of this nature may also have unintended consequences by compelling subjects of PID allegations to cooperate by answering the questions of public officials, public authorities and investigating authorities despite any existing privilege against self-incrimination.

## ***How can reporters be protected?***

### *Confidentiality obligations*

It is a criminal offence under the Commonwealth Act to disclose or use the identifying information of a discloser, with a maximum penalty of six months imprisonment (s.20). The equivalent provision in the NSW Act creates no criminal liability and is described in the heading to the section as a “*guideline*” (s.22). The experience of some members of the Steering Committee in the 20 years since the NSW provision was enacted is that any breaches of the guideline were generally inadvertent and are likely to have occurred whether or not there was a criminal penalty attached.

### *Obligations to protect reporters*

The Commonwealth Act requires principal officers to:

- take reasonable steps to protect employees who have made PIDs (s.59 (3))
- establish procedures for assessing risks of reprisal against persons who make PIDs (s.59 (1))
- establish procedures for confidentiality of investigative processes (s.59 (1)).

While acknowledging that such a proactive approach aims to ensure that disclosures are managed in a way that best prevents adverse consequences for the people who make them, the Steering Committee believes that the NSW Act presently implies obligations on authorities to protect disclosers. Section 6D requires all public authorities to have a PID policy in place, having regard to the NSW Ombudsman’s

guidelines and model policies which provide considerable advice in regards to proactively protecting reporters, including by assessing the risk of reprisal. More detailed, prescriptive obligations may place an administrative burden on smaller authorities, such as local councils, that is disproportionate to the risks.

### ***How should other people involved in the implementation of the Act be protected?***

The potential legal liabilities of various parties involved in the investigation of a disclosure are specifically outlined in the Commonwealth Act:

- Section 57 protects witnesses from legal liability in relation to information they provide in the course of an investigation of a PID.
- The principal officer (or delegate), authorised officer or supervisor are *“not liable to any criminal or civil proceedings, or any disciplinary action ... for or in relation to an act or matter done, or omitted to be done, in good faith”* in the performance/exercise of any function/power conferred on them (s.78 (1)).
- A related protection in the Commonwealth Act provides that the taking of administrative action that is reasonable to protect a reporter from detriment does not constitute reprisal action under that Act (s.13 (3)).

The Steering Committee does not believe that equivalent provisions are necessary in the NSW Act. While it is important for people involved in an investigation to act appropriately without fear of the consequences, the Steering Committee has not seen any evidence such fear exists.

This is an issue that could arise whenever an investigation is taking place, regardless of how that issue came to light (e.g. raised by a member of the public or an audit and risk committee). It is difficult to see how any actions described in these proposed sections taken in good faith and in purported compliance with the NSW Act would constitute grounds for disciplinary action or for civil or criminal liability, or could be categorised as reprisal.

### ***What options are available to respond to reprisal action?***

The Commonwealth Act contains a number of provisions that address the situation of a person suffering adverse treatment arising out of the making of a disclosure:

- providing that employers are to be held jointly and severally liable to pay compensation in certain circumstances (s.14)
- allowing for injunctions, apologies and other orders to be sought if a reprisal is taken or threatened (s.15)
- authorising a court to order the reinstatement of a reporter whose employment was terminated in reprisal for a PID (s.16)
- providing that civil remedies can be sought for reprisal even if a criminal offence has not or cannot be brought (s.19A)
- enabling remedies to be sought by employees under the Commonwealth [Fair Work Act 2009](#) (ss.22–22A) in addition to the Federal Court in its general civil jurisdiction.

The Steering Committee believes that the existing protections contained in the NSW Act provide sufficient redress to reporters seeking such relief. For example:

- The civil cause of action for reprisal in s.20A of the NSW Act already allows employees to sue both the person who took that action and the employing agency on a direct (given that acts of the employees of an agency are acts of the agency) or vicarious liability basis. The provisions that would allow employers to avoid liability under s.14 (2) of the Commonwealth Act are similar in general terms to circumstances that would allow employers to avoid vicarious liability under the civil law.

- The power to issue an injunction under s.20B of the NSW Act includes the court’s normal power to issue a mandatory injunction requiring an offending agency to reinstate a person who was terminated as reprisal action, as well as issuing an injunction to stop any such attempted termination. This provision also refers to “*proposing*” to engage in reprisal, which is similar in scope to the Commonwealth Act terminology of “*threatening*” (s.15).
- The taking of civil action in the courts is not predicated on the bringing of criminal charges, in view of the differing standard of proof.
- The NSW Act does not preclude a reporter from initiating industrial action, as well as seeking relief under the PID Act. Section 20A (4) of the NSW Act appears to anticipate that action could be taken concurrently under the PID Act and the [Industrial Relations Act 1996](#) (NSW) or any other law.

Despite this, the Steering Committee acknowledges that, where the taking of reprisal has damaged the reputation of a reporter (either generally or in the workplace), a suitable formal apology (either alone or in conjunction with other remedies) from the person found responsible for that action may well be of great value to the reporter as evidence of vindication and to assist in restoring the reporters’ reputation.<sup>3</sup> The government may wish to consider making it clear that the court’s injunctive powers provided for in s.20B of the NSW Act include the power to issue an apology, restrain termination or mandate reinstatement by way of a note in the Act.

**Recommendation 7.** That a note be added to s.20B of the NSW Act to make explicit that a court may grant an injunction to issue an apology, restrain termination or mandate reinstatement.

#### Costs

The Commonwealth Act provides that a court cannot order the applicant to pay costs incurred in any proceedings relating to compensation, injunction or reinstatement unless the proceedings were instituted vexatiously or without reasonable cause, or the applicant’s unreasonable act or omission caused the other party to incur the costs (s.18). Given that cost impediments and the risks involved in taking such action have been the most significant barrier to civil remedies to date,<sup>4</sup> the Steering Committee believes that including a similar provision in the NSW Act would provide greater accessibility for reporters who have faced reprisal to seek the protections of the Act.<sup>5</sup>

**Recommendation 8.** That Part 3 of the NSW Act provide that a court cannot order the applicant to pay costs incurred in any proceedings relating to compensation or injunction unless the proceedings were instituted vexatiously or without reasonable cause, or the applicant’s unreasonable act or omission caused the other party to incur the costs (s.18, Commonwealth Act).

#### ***What other obligations should be placed on officers of authorities?***

##### *Principal officers*

As mentioned above, the Commonwealth Act requires the heads of agencies to take reasonable steps to protect reporters from detrimental action in reprisal and to ensure that confidentiality is dealt with in their internal reporting procedures. The Commonwealth Act also requires that principal officers to:

- ensure that the number of authorised officers in their agency is sufficient to ensure they are readily accessible (s.59 (3))

<sup>3</sup> House of Representatives Standing Committee on Legal and Constitutional Affairs 2009, *Whistleblower protection: a comprehensive scheme for the Commonwealth public sector*, Canberra, p.98. Also see *Burns v Radio 2UE Sydney Pty Ltd & Ors* (No2) [2005] NSW ADT 24.

<sup>4</sup> Brown, AJ 2013, ‘Towards ‘ideal’ whistleblowing legislation? Some lessons from recent Australian experience’, *E-Journal of International and Comparative Labour Studies*, vol.2, no.3, pp.153–182.

<sup>5</sup> A similar provision is included at section 216A(7) of the [Police Act 1990](#) (NSW).

- ensure that public officials in their agency are aware of the identify of each authorised officer in their agency (s.59 (3))
- take appropriate action in response to recommendations in an investigation report (s.59 (4)).

The Steering Committee believes incorporating similar obligations on the heads of authorities in the NSW Act would promote achievement of the objectives of the Act. The attitude and approach of heads of authorities can be expected to have a significant impact on the culture of the authority and its attitude to internal disclosures and the people who make them. This change will need to be complemented by administrative arrangements within authorities. The Ombudsman would then monitor compliance as part of its audit program.

**Recommendation 9.** That s.6E of the NSW Act be expanded to provide that the responsibilities of principal officers of public authorities include: appointing a sufficient number of disclosure officers to ensure they are readily accessible by public officials belonging to the authority; and ensuring that appropriate action is taken in response to recommendations in investigation reports (s.59 (3), Commonwealth Act).

#### *Authorised officers*

The Commonwealth Act places obligations on authorised officers to inform individuals that their disclosure could be treated as a disclosure for the purposes of the Act and explain what the Act requires in order for the disclosure to be treated as an internal disclosure (s.60).

The Steering Committee is concerned such a provision may be used to ‘warn’ reporters about the fact that they were making a PID in an attempt to dissuade them from proceeding with their disclosure. While it is important that reporters know the effect of the information they are providing (if, for example, they are subject to consequences for knowingly providing false information), this is already dealt with in guidance material and the internal reporting policies of most public authorities. It also seems undesirable that a person making a deliberately false and malicious disclosure could potentially seek to avoid the consequences for doing so on the technical ground that the legislation required the authority to inform them that their disclosure was being treated as a PID and the authority had failed to do that.

#### ***What should be the functions of the Ombudsman?***

The Commonwealth Act gives the Ombudsman a range of new roles not included in the NSW Act, for example to determine standards (s.74), and requiring agencies to:

- notify the Ombudsman if a PID is allocated to an agency within their jurisdiction (s.44)
- notify the Ombudsman of a decision not to investigate a PID (s.50A)
- seek from the Ombudsman extensions of the 90 day timeframe for investigations (s.52).

The Steering Committee notes that such functions for the NSW Ombudsman would only be relevant and appropriate if the responsibilities of the Ombudsman under the NSW Act were to be expanded to include a formal oversight role in relation to the notification and handling of individual PIDs by NSW public authorities and officials.

The Steering Committee also notes that the NSW Act provides for functions of the Ombudsman that are not included in the Commonwealth Act. For example, the NSW Ombudsman is to monitor and audit the exercise of functions under and compliance with the Act by public authorities (s.6B). Additionally, the Commonwealth Act only requires agencies to assist the Ombudsman in the preparation of an annual report (s.76), while the NSW Act provides specific requirements to report to the NSW Ombudsman every six months (s.6CA) as well as in the annual report of the public authority (s.31).

## APPENDIX: Comparative table of the Commonwealth Act and NSW Act provisions

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p><b>PART 1—INTRODUCTION</b></p> <p><b>Division 1—Preliminary matters</b></p> <p><b>1 Short title</b> This Act may be cited as the <i>Public Interest Disclosure Act 2013</i>.</p> <p><b>2 Commencement</b> [Not relevant]</p> <p><b>3 Crown to be bound</b></p> <p>(1) This Act binds the Crown in each of its capacities.</p> <p>(2) However, this Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.</p> <p><b>4 Extension to external Territories</b> This Act extends to every external Territory.</p> <p><b>5 Extension to things outside Australia</b> This Act extends to acts, omissions, matters and things outside Australia.</p> <p><b>Division 2—Objects</b></p> <p><b>6 Objects</b> The objects of this Act are:</p> <p>(a) to promote the integrity and accountability of the Commonwealth public sector; and</p> <p>(b) to encourage and facilitate the making of public interest disclosures by public officials; and</p> <p>(c) to ensure that public officials who make public interest disclosures are supported and are protected from adverse consequences relating to the disclosures; and</p> <p>(d) to ensure that disclosures by public officials are properly investigated and dealt with.</p> <p><b>Division 3—Overview</b></p> <p><b>7 Overview</b></p> <p>(1) This Act:</p> <p>(a) provides a means for protecting public officials, and former public officials, from adverse consequences of disclosing information that, in the public interest, should be disclosed; and</p> <p>(b) provides for the investigation of matters that are disclosed.</p>	<p><b>1 Name of Act</b> This Act may be cited as the <i>Public Interest Disclosures Act 1994</i>.</p> <p><b>2 Commencement</b> [Not relevant]</p> <p><b>6 Act binds the Crown</b> This Act binds the Crown in right of New South Wales.</p> <p>[No comparable provisions]</p> <p>[No comparable provisions]</p> <p><b>3 Object of Act</b></p> <p>(1) The object of this Act is to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration, serious and substantial waste, government information contravention and local government pecuniary interest contravention in the public sector by:</p> <p>(a) enhancing and augmenting established procedures for making disclosures concerning such matters, and</p> <p>(b) protecting persons from reprisals that might otherwise be inflicted on them because of those disclosures, and</p> <p>(c) providing for those disclosures to be properly investigated and dealt with.</p> <p>(2) Nothing in this Act is intended to affect the proper administration and management of an investigating authority or public authority (including action that may or is required to be taken in respect of the salary, wages, conditions of employment or discipline of a public official), subject to the following:</p> <p>(a) detrimental action is not to be taken against a person if to do so would be in contravention of this Act, and</p> <p>(b) beneficial treatment is not to be given in favour of a person if the purpose (or one of the purposes) for doing so is to influence the person to make, to refrain from making, or to withdraw a disclosure.</p> <p>[No comparable provisions]</p>

Commonwealth Act—[Public Interest Disclosure Act 2013](#)

*Protection of disclosers*

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

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

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

*Investigations*

(3) Part 3 provides for:

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

*Administrative matters*

(4) Part 4 provides for:

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

**Division 4—Definitions**

**8 Definitions**

In this Act:

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

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

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

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

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

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

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

**Cabinet information** means:

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

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

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

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

**Commonwealth tribunal** means:

- (a) a body established as a tribunal by or under a law of the Commonwealth; or
- (b) a statutory officeholder prescribed by the PID rules for the purposes of this paragraph.

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

NSW Act—[Public Interest Disclosures Act 1994](#)

**4 Definitions**

(1) In this Act:

**CC Inspector** means the Inspector of the New South Wales Crime Commission appointed under the *Crime Commission Act 2012*.

**CC officer** means an officer of the Crime Commission, as defined in the *Crime Commission Act 2012*.

**CCI officer** means an officer of the CC Inspector, as defined in the *Crime Commission Act 2012*.

**Commission** means the Independent Commission Against Corruption.

**corrupt conduct** has the meaning given to it by the *Independent Commission Against Corruption Act 1988*.

**Crime Commission** means the New South Wales Crime Commission.

**detrimental action** is defined in section 20.

**exercise** of a function includes, where the function is a duty, the performance of the duty.

**function** includes power, authority or duty.

**government information contravention** means conduct of a kind that constitutes a failure to exercise functions in accordance with any provision of the *Government Information (Public Access) Act 2009*.

**ICAC Inspector** means the Inspector of the Independent Commission Against Corruption appointed under the *Independent Commission Against Corruption Act 1988*.

**investigate** includes inquire or audit.

**investigating authority** means:

- (a) the Auditor-General, or
- (b) the Commission, or
- (c) the Ombudsman, or
- (d) the PIC, or
- (e) the PIC Inspector, or

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p><b>contracted service provider</b> has the meaning given by subsection 30(2).</p> <p><b>Defence Department</b> means the Department administered by the Minister administering Part III of the <i>Defence Act 1903</i>, and includes:</p> <ul style="list-style-type: none"> <li>(a) the Defence Force; and</li> <li>(b) the Australian Army Cadets; and</li> <li>(c) the Australian Navy Cadets; and</li> <li>(d) the Australian Air Force Cadets.</li> </ul> <p><b>Department</b> means:</p> <ul style="list-style-type: none"> <li>(a) a Department of State (including the Defence Department), excluding any part that is itself an Executive Agency or Statutory Agency; or</li> <li>(b) a Department of the Parliament that is established under the <i>Parliamentary Service Act 1999</i>.</li> </ul> <p><b>designated publication restriction</b> means any of the following:</p> <ul style="list-style-type: none"> <li>(a) section 121 of the <i>Family Law Act 1975</i>;</li> <li>(b) section 91X of the <i>Migration Act 1958</i>;</li> <li>(c) section 110X of the <i>Child Support (Registration and 25 Collection) Act 1988</i>;</li> <li>(d) a non-publication order (within the meaning of Part XAA of 27 the <i>Judiciary Act 1903</i>) of any court;</li> <li>(e) a suppression order (within the meaning of Part XAA of the <i>Judiciary Act 1903</i>) of any court;</li> <li>(f) an order under section 31 or 38L of the <i>National Security Information (Criminal and Civil Proceedings) Act 2004</i>;</li> <li>(g) an order under section 28 of the <i>Witness Protection Act 1994</i>;</li> <li>(h) an order under subsection 35(2) of the <i>Administrative Appeals Tribunal Act 1975</i>;</li> <li>(i) a direction under section 35AA of the <i>Administrative Appeals Tribunal Act 1975</i>;</li> <li>(j) a direction under subsection 25A(9) of the <i>Australian Crime Commission Act 2002</i>;</li> <li>(k) section 29B of the <i>Australian Crime Commission Act 2002</i>;</li> <li>(l) a direction under section 90 of the <i>Law Enforcement Integrity Commissioner Act 2006</i>;</li> <li>(m) section 92 of the <i>Law Enforcement Integrity Commissioner Act 2006</i>.</li> </ul> <p><b>detriment</b> includes the meaning given by subsection 13(2).</p> <p><b>disclosable conduct</b> has the meaning given by Subdivision B of Division 2 of Part 2.</p> <p><b>disclose</b> includes re-disclose.</p> <p><b>disclosure investigation</b> means:</p> <ul style="list-style-type: none"> <li>(a) an investigation under Part 3; or</li> <li>(b) an investigation, in relation to a disclosure that is allocated under Division 1 of Part 3, by an investigative agency under a separate investigative power.</li> </ul> <p><b>engage in conduct</b> means:</p> <ul style="list-style-type: none"> <li>(a) do an act; or</li> <li>(b) omit to do an act.</li> </ul> <p><b>Executive Agency</b> has the same meaning as in the <i>Public Service Act 1999</i>.</p> <p><b>Federal Circuit Court</b> means the Federal Circuit Court of Australia.</p>	<ul style="list-style-type: none"> <li>(f) the local government investigating authority, or</li> <li>(g) the ICAC Inspector, or</li> <li>(h) the Information Commissioner, or</li> <li>(i) the CC Inspector.</li> </ul> <p><b>investigation Act</b> means:</p> <ul style="list-style-type: none"> <li>(a) the <i>Independent Commission Against Corruption Act 1988</i>, or</li> <li>(b) the <i>Ombudsman Act 1974</i>, or</li> <li>(c) the <i>Public Finance and Audit Act 1983</i>, or</li> <li>(d) the <i>Police Integrity Commission Act 1996</i>, or</li> <li>(e) the <i>Local Government Act 1993</i>, or</li> <li>(f) the <i>Government Information (Information Commissioner) Act 2009</i>, or</li> <li>(g) the <i>Crime Commission Act 2012</i>.</li> </ul> <p><b>journalist</b> means a person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media.</p> <p><b>local government authority</b> means:</p> <ul style="list-style-type: none"> <li>(a) a council, or</li> <li>(b) a county council,</li> </ul> <p>within the meaning of the <i>Local Government Act 1993</i>.</p> <p><b>local government investigating authority</b> means the Director-General under section 429A (Complaints about councils, councillors, delegates and staff) of the <i>Local Government Act 1993</i>.</p> <p><b>local government pecuniary interest contravention</b> means the breach of an obligation imposed by the <i>Local Government Act 1993</i> in connection with a pecuniary interest.</p> <p><b>maladministration</b> is defined in section 11 (2).</p> <p><b>officer of the ICAC Inspector</b> means an officer of the Inspector, as defined in the <i>Independent Commission Against Corruption Act 1988</i>.</p> <p><b>PIC</b> means the Police Integrity Commission constituted under the <i>Police Integrity Commission Act 1996</i>.</p> <p><b>PIC Inspector</b> means the Inspector of the Police Integrity Commission appointed under the <i>Police Integrity Commission Act 1996</i>.</p> <p><b>PIC officer</b> means an officer of the Commission, as defined in the <i>Police Integrity Commission Act 1996</i>.</p> <p><b>PICI officer</b> means an officer of the Inspector, as defined in the <i>Police Integrity Commission Act 1996</i>.</p> <p><b>principal officer</b> of a public authority includes:</p> <ul style="list-style-type: none"> <li>(a) for the Department of the Legislative Assembly—the Clerk of the Legislative Assembly and the Speaker of the Legislative Assembly, and</li> <li>(b) for the Department of the Legislative Council—the Clerk of the Parliaments and the President of the Legislative Council, and</li> <li>(c) for the Department of Parliamentary Services—the Speaker of the Legislative Assembly, the President of the Legislative Council and the Executive Manager of the Department.</li> </ul> <p><b>public authority</b> means any public authority whose conduct or activities may be investigated by an investigating authority, and includes (without limitation) each of the following:</p>

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p><b>Federal Court</b> means the Federal Court of Australia.</p> <p><b>foreign country</b> includes:</p> <ol style="list-style-type: none"> <li>a colony or overseas territory; and</li> <li>a territory outside Australia, where a foreign country is to any extent responsible for the international relations of the territory; and</li> <li>a territory outside Australia that is to some extent self-governing, but that is not recognised as an independent sovereign state by Australia.</li> </ol> <p><b>foreign government</b> means the government of a foreign country.</p> <p><b>foreign public official</b> has the same meaning as in Division 70 of the <i>Criminal Code</i>.</p> <p><b>identifying information</b> has the meaning given by paragraph 20(1)(b).</p> <p><b>IGIS</b> means the Inspector-General of Intelligence and Security.</p> <p><b>information</b>, in relation to a disclosure, includes an allegation made in conjunction with another disclosure of information.</p> <p><b>intelligence agency</b> means:</p> <ol style="list-style-type: none"> <li>the Australian Secret Intelligence Service; or</li> <li>the Australian Security Intelligence Organisation; or</li> <li>the Defence Imagery and Geospatial Organisation; or</li> <li>the Defence Intelligence Organisation; or</li> <li>the Defence Signals Directorate; or</li> <li>the Office of National Assessments.</li> </ol> <p><b>intelligence information</b> has the meaning given by section 41.</p> <p><b>internal disclosure</b> means a public interest disclosure that:</p> <ol style="list-style-type: none"> <li>is covered by item 1 of the table in subsection 26(1); or</li> <li>is an allegation made in conjunction with such a disclosure.</li> </ol> <p><b>international organisation</b> means an organisation:</p> <ol style="list-style-type: none"> <li>of which Australia and one or more foreign countries are members; or</li> <li>that is constituted by a person or persons representing Australia and a person or persons representing one or more foreign countries.</li> </ol> <p><b>investigate</b>, in relation to a disclosure, has the meaning given by subsections 47(2) to (4).</p> <p><b>investigative agency</b> means:</p> <ol style="list-style-type: none"> <li>the Ombudsman; or</li> <li>the IGIS; or</li> <li>an agency that is prescribed by the PID rules to be an investigative agency for the purposes of this Act.</li> </ol> <p><b>judicial officer</b> has the meaning given by subsection 32(2).</p> <p><b>legal professional privilege</b> includes privilege under Division 1 of Part 3.10 of the <i>Evidence Act 1995</i> or under a corresponding law of a State or Territory.</p> <p><b>member of the staff</b> of the chief executive officer of a court or Commonwealth tribunal has the meaning given by subsection 32(3).</p> <p><b>official of a registered industrial organisation</b> means a person who holds an office (within the meaning of the <i>Fair Work Act 2009</i>) in an organisation registered, or an association recognised,</p>	<ol style="list-style-type: none"> <li>a Division of the Government Service,</li> <li>a State owned corporation and any subsidiary of a State owned corporation,</li> <li>a local government authority,</li> <li>the NSW Police Force, PIC and PIC Inspector,</li> <li>the Department of Parliamentary Services, the Department of the Legislative Assembly and the Department of the Legislative Council.</li> </ol> <p><b>public interest disclosure</b> means a disclosure satisfying the applicable requirements of Part 2.</p> <p><b>public official</b>—see section 4A.</p> <p><b>relevant investigation Act</b> means:</p> <ol style="list-style-type: none"> <li>in relation to an investigating authority other than the local government investigating authority—the Act that appoints or constitutes the investigating authority, and</li> <li>in relation to the local government investigating authority—the <i>Local Government Act 1993</i>.</li> </ol> <p><b>Steering Committee</b> means the Public Interest Disclosures Steering Committee established by section 6A.</p> <p>(2) Notes included in this Act do not form part of this Act.</p>



**Commonwealth Act—[Public Interest Disclosure Act 2013](#)**

under the *Fair Work (Registered Organisations) Act 2009*.

**Ombudsman** means the Commonwealth Ombudsman.

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

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

**prescribed authority** has the meaning given by section 72.

**principal officer**, in relation to an agency, has the meaning given by section 73.

**public interest disclosure** has the meaning given by Subdivision A of Division 2 of Part 2.

**public official** has the meaning given by Subdivision A of Division 3 of Part 4.

**recipient**, in relation to a disclosure of information, means the person to whom the information is disclosed.

**relates**: section 35 sets out when conduct **relates** to an agency.

**Royal Commission** has the meaning given by the *Royal Commissions Act 1902*.

**sensitive law enforcement information** has the meaning given by subsection 41(2).

**separate investigative power** has the meaning given by subsection 49(2).

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

**statutory officeholder** has the meaning given by subsection 69(2).

**supervisor**, in relation to a person who makes a disclosure, is a public official who supervises or manages the person making the disclosure.

**suspected disclosable conduct** has the meaning given by subparagraph 43(3)(a)(i).

**takes a reprisal** has the meaning given by section 13.

**PART 2—PROTECTION OF DISCLOSERS**

**Division 1—Protections**

**9 Simplified outline**

The following is a simplified outline of this Division:

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

It is an offence to take a reprisal, or to threaten to take a reprisal, against a person because of a public interest disclosure (including a proposed or a suspected public interest disclosure). The Federal Court or Federal Circuit Court may make orders for civil remedies (including compensation, injunctions and reinstatement of employment) if a reprisal is taken against a person because of a public interest disclosure (including a proposed or a suspected public interest disclosure).

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

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

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

**Subdivision A—Immunity from liability**

**10 Protection of disclosers**

(1) If an individual makes a public interest disclosure:

**Review of the Commonwealth public interest disclosure legislation**

**NSW Act—[Public Interest Disclosures Act 1994](#)**

[No comparable provisions]

**21 Protection against actions etc**

(1) A person is not subject to any liability for making a public interest disclosure and no action, claim or

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p>(a) the individual is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the public interest disclosure; and</p> <p>(b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the individual on the basis of the public interest disclosure.</p> <p>(2) Without limiting subsection (1):</p> <p>(a) the individual has absolute privilege in proceedings for defamation in respect of the public interest disclosure; and</p> <p>(b) a contract to which the individual is a party must not be terminated on the basis that the public interest disclosure constitutes a breach of the contract.</p>	<p>demand may be taken or made of or against the person for making the disclosure.</p> <p>(2) This section has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure (whether or not imposed by an Act) applicable to the person.</p> <p>(3) The following are examples of the ways in which this section protects persons who make public interest disclosures. A person who has made a public interest disclosure:</p> <ul style="list-style-type: none"> <li>• has a defence of absolute privilege in respect of the publication to the relevant investigating authority, public authority, public official, member of Parliament or journalist of the disclosure in proceedings for defamation</li> <li>• on whom a provision of an Act (other than this Act) imposes a duty to maintain confidentiality with respect to any information disclosed is taken not to have committed an offence against the Act</li> <li>• who is subject to an obligation by way of oath, rule of law or practice to maintain confidentiality with respect to the disclosure is taken not to have breached the oath, rule of law or practice or a law relevant to the oath, rule or practice</li> <li>• is not liable to disciplinary action because of the disclosure.</li> </ul>
<p><b>11 Liability for false or misleading statements etc. unaffected</b></p> <p>(1) Section 10 does not apply to civil, criminal or administrative liability (including disciplinary action) for knowingly making a statement that is false or misleading.</p> <p>(2) Without limiting subsection (1) of this section, section 10 does not apply to liability for an offence against section 137.1, 137.2, 144.1 15 or 145.1 of the <i>Criminal Code</i>.</p>	<p><b>28 False or misleading disclosures</b></p> <p>A public official must not, in making a disclosure to an investigating authority, public authority or public official, wilfully make any false statement to, or mislead or attempt to mislead, the investigating authority, public authority or public official.</p> <p>Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.</p> <p>[No comparable provisions]</p>
<p><b>11A Designated publication restrictions</b></p> <p>Section 10 does not apply to civil, criminal or administrative liability (including disciplinary action) for making a disclosure that contravenes a designated publication restriction if the person making the disclosure:</p> <p>(a) knows that the disclosure contravenes the designated publication restriction; and</p> <p>(b) does not have a reasonable excuse for that contravention.</p>	<p>[No comparable provisions]</p>
<p><b>12 Discloser’s liability for own conduct not affected</b></p> <p>To avoid doubt, whether the individual’s disclosure of his or her own conduct is a public interest disclosure does not affect his or her liability for the conduct.</p>	<p>[No comparable provisions]</p>
<p><b>Subdivision B—Protection from reprisals</b></p>	
<p><b>13 What constitutes taking a reprisal</b></p> <p>(1) A person (the <i>first person</i>) <b>takes a reprisal</b> against another person (the <i>second person</i>) if:</p> <p>(a) the first person causes (by act or omission) any detriment to the second person; and</p> <p>(b) when the act or omission occurs, the first person believes or suspects that the second person or any other person made, may have made or proposes to make a public interest disclosure; and</p> <p>(c) that belief or suspicion is the reason, or part of the reason, for the act or omission.</p> <p>(2) <b>Detriment</b> includes any disadvantage, including (without limitation) any of the following:</p> <p>(a) dismissal of an employee;</p> <p>(b) injury of an employee in his or her employment;</p> <p>(c) alteration of an employee’s position to his or her detriment;</p>	<p><b>20 Protection against reprisals</b></p> <p>(1C) This section extends to a case where the person who takes the detrimental action does so because the person believes or suspects that the other person made or may have made a public interest disclosure even if the other person did not in fact make a public interest disclosure.</p> <p>(2) In this Act, <b>detrimental action</b> means action causing, comprising or involving any of the following:</p> <p>(a) injury, damage or loss,</p> <p>(b) intimidation or harassment,</p> <p>(c) discrimination, disadvantage or adverse treatment in relation to employment,</p> <p>(d) dismissal from, or prejudice in, employment,</p> <p>(e) disciplinary proceeding.</p>

**Commonwealth Act—[Public Interest Disclosure Act 2013](#)**

- (d) discrimination between an employee and other employees of the same employer.
- (3) Despite subsection (1), a person does not take a reprisal against another person to the extent that the person takes administrative action that is reasonable to protect the other person from detriment.

**14 Compensation**

- (1) If the Federal Court or Federal Circuit Court is satisfied, on the application of a person (the **applicant**), that another person (the **respondent**) took or threatened to take, or is taking or threatening to take, a reprisal against the applicant, the Court may:
  - (a) in any case—make an order requiring the respondent to compensate the applicant for loss, damage or injury as a result of the reprisal or threat; or
  - (b) if the Court is satisfied that the respondent took or threatened 31 to take, or is taking or threatening to take, the reprisal in connection with the respondent’s position as an employee:
    - (i) make an order requiring the respondent to compensate the applicant for a part of loss, damage or injury as a result of the reprisal or threat, and make another order requiring the respondent’s employer to compensate the applicant for a part of loss, damage or injury as a result of the reprisal or threat; or
    - (ii) make an order requiring the respondent and the respondent’s employer jointly to compensate the applicant for loss, damage or injury as a result of the reprisal or threat; or
    - (iii) make an order requiring the respondent’s employer to compensate the applicant for loss, damage or injury as a result of the reprisal or threat.
- (2) The Federal Court or Federal Circuit Court must not make an order under paragraph (1)(b) if the respondent’s employer establishes that it took reasonable precautions, and exercised due diligence, to avoid the reprisal or threat.
- (3) If the Federal Court or Federal Circuit Court makes an order under subparagraph (1)(b)(ii), the respondent and the respondent’s employer are jointly and severally liable to pay the compensation concerned.

**15 Injunctions, apologies and other orders**

- (1) If the Federal Court or Federal Circuit Court is satisfied, on the application of a person (the **applicant**), that another person (the **respondent**) took or threatened to take, or is taking or threatening to take, a reprisal against the applicant, the Court may make any or all of the following orders:
  - (a) an order granting an injunction, on such terms as the Court thinks appropriate:
    - (i) restraining the respondent from taking, or threatening to take, the reprisal; or
    - (ii) if the reprisal or threat involves refusing or failing to do something—requiring the respondent to do that thing;
  - (b) an order requiring the respondent to apologise to the applicant for taking, or threatening to take, the reprisal;
  - (c) any other order the Court thinks appropriate.
- (2) If the Federal Court or Federal Circuit Court has power under subsection (1) to grant an

**NSW Act—[Public Interest Disclosures Act 1994](#)**

**20A Compensation for reprisals**

- (1) A person who takes detrimental action against another person that is substantially in reprisal for the other person making a public interest disclosure is liable in damages for any loss that the other person suffers as a result of that detrimental action.
- (2) This section extends to a case where the person who takes the detrimental action does so because the person believes or suspects that the other person made or may have made a public interest disclosure even if the other person did not in fact make a public interest disclosure.
- (3) Damages recoverable under this section do not include exemplary or punitive damages or damages in the nature of aggravated damages.
- (4) An entitlement to damages arising under this section does not constitute redress in relation to detrimental action comprising dismissal from employment, for the purposes of section 90 (Effect of availability of other remedies) of the *Industrial Relations Act 1996* or any other law.

**20B Injunctions to prevent reprisals**

- (1) An investigating authority, or any other public authority with the approval of the Attorney General, may apply to the Supreme Court for an injunction to prevent a contravention of section 20 (Protection against reprisals).
- (2) The Supreme Court may, on application under this section, grant an injunction restraining a person from engaging in conduct in which the person has engaged, is engaged or is proposing to engage and that constituted, constitutes or would constitute a contravention of section 20, and, if in the opinion of the Supreme Court it is desirable to do so, requiring that person to do any act or thing to remedy such a contravention.
- (3) The Court may grant an interim injunction pending determination of an application under this section if the Court thinks it is desirable to do so.
- (4) The Court may discharge or vary an injunction granted under this section.
- (5) The power of the Court to grant an injunction restraining a person from engaging in conduct may be

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<p>injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the Court may make any other orders (including granting an injunction) that it thinks appropriate against any other person who has:</p> <ul style="list-style-type: none"> <li>(a) aided, abetted, counselled or procured the conduct against the applicant; or</li> <li>(b) induced the conduct against the applicant, whether through threats or promises or otherwise; or</li> <li>(c) been in any way (directly or indirectly) knowingly concerned in or a party to the conduct against the applicant; or</li> <li>(d) conspired with others to effect the conduct against the applicant.</li> </ul>	<p>exercised:</p> <ul style="list-style-type: none"> <li>(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind, and</li> <li>(b) whether or not the person has previously engaged in conduct of that kind, and</li> <li>(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.</li> </ul> <p>(6) The Court must not require an applicant for an injunction under this section or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.</p>
<p><b>16 Reinstatement</b></p> <p>If the Federal Court or Federal Circuit Court is satisfied, on the application of a person (the <b>applicant</b>), that:</p> <ul style="list-style-type: none"> <li>(a) another person (the <b>respondent</b>) has taken, or is taking, a reprisal against the applicant; and</li> <li>(b) the applicant is or was employed in a particular position with the respondent; and</li> <li>(c) the reprisal wholly or partly consists, or consisted, of the respondent terminating, or purporting to terminate, the applicant’s employment;</li> </ul> <p>the Court may order that the applicant be reinstated in that position or a position at a comparable level.</p>	<p>[No comparable provisions]</p>
<p><b>17 Multiple orders</b></p> <p>The Federal Court or Federal Circuit Court may make orders under sections 14, 15 and 16 in respect of the same conduct.</p>	<p>[No comparable provisions]</p>
<p><b>18 Costs only if proceedings instituted vexatiously etc.</b></p> <ul style="list-style-type: none"> <li>(1) In proceedings (including an appeal) in a court in relation to a matter arising under section 14, 15 or 16, the applicant for an order under that section must not be ordered by the court to pay costs incurred by another party to the proceedings, except in accordance with subsection (2).</li> <li>(2) The applicant may be ordered to pay the costs only if: <ul style="list-style-type: none"> <li>(a) the court is satisfied that the applicant instituted the proceedings vexatiously or without reasonable cause; or</li> <li>(b) the court is satisfied that the applicant’s unreasonable act or omission caused the other party to incur the costs.</li> </ul> </li> </ul>	<p>[No comparable provisions]</p>
<p><b>19 Offences</b></p> <p><i>Taking a reprisal</i></p> <ul style="list-style-type: none"> <li>(1) A person commits an offence if the person takes a reprisal against another person. Penalty: Imprisonment for 2 years or 120 penalty units, or both.</li> <li>(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the other person made, may have made or intended to make a public interest disclosure.</li> </ul> <p><i>Threatening to take a reprisal</i></p> <ul style="list-style-type: none"> <li>(1) A person (the <b>first person</b>) commits an offence if: <ul style="list-style-type: none"> <li>(a) the first person makes a threat to another person (the <b>second person</b>) to take a reprisal against the second person or a third person; and</li> </ul> </li> </ul>	<p><b>20 Protection against reprisals</b></p> <ul style="list-style-type: none"> <li>(1) A person who takes detrimental action against another person that is substantially in reprisal for the other person making a public interest disclosure is guilty of an offence. Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.</li> <li>(1A) In any proceedings for an offence against this section, it lies on the defendant to prove that detrimental action shown to be taken against a person was not substantially in reprisal for the person making a public interest disclosure.</li> <li>(1B) A public official who takes detrimental action against another person that is substantially in reprisal for the other person making a public interest disclosure is guilty of engaging in conduct that constitutes misconduct in the performance of his or her duties as a public official and that justifies the</li> </ul>

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<p>(b) the first person:</p> <p>(i) intends the second person to fear that the threat will be carried out; or</p> <p>(ii) is reckless as to the second person fearing that the threat will be carried out.</p> <p>Penalty: Imprisonment for 2 years or 120 penalty units, or both.</p> <p>(2) For the purposes of subsection (3), the threat may be:</p> <p>(a) express or implied; or</p> <p>(b) conditional or unconditional.</p> <p>(3) In a prosecution for an offence under subsection (3), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.</p>	<p>taking of disciplinary action against the public official, including disciplinary action provided for:</p> <p>(a) by or under an Act that regulates the employment or service of the public official, or</p> <p>(b) by or under a contract of employment or contract for services that governs the employment or engagement of the public official.</p> <p>(1C) This section extends to a case where the person who takes the detrimental action does so because the person believes or suspects that the other person made or may have made a public interest disclosure even if the other person did not in fact make a public interest disclosure.</p> <p>(2) In this Act, <b>detrimental action</b> means action causing, comprising or involving any of the following:</p> <p>(a) injury, damage or loss,</p> <p>(b) intimidation or harassment,</p> <p>(c) discrimination, disadvantage or adverse treatment in relation to employment,</p> <p>(d) dismissal from, or prejudice in, employment,</p> <p>(e) disciplinary proceeding.</p> <p>(3) Proceedings for an offence against this section may be instituted at any time within 3 years after the offence is alleged to have been committed.</p> <p>(4) A public authority (other than an investigating authority and the NSW Police Force) must refer any evidence of an offence under this section to the Commissioner of Police or the Commission. Evidence of an offence that relates to the NSW Police Force must instead be referred to the PIC.</p> <p>(5) An investigating authority (other than the Commission, the ICAC Inspector, the PIC and the PIC Inspector) must, after completing or discontinuing an investigation into an alleged offence under this section, refer any evidence of the offence to the Commissioner of Police. Evidence of an offence that relates to the NSW Police Force must instead be referred to the PIC.</p> <p>(6) The NSW Police Force, the Commission, the ICAC Inspector, the PIC or the PIC Inspector must, after completing an investigation into an alleged offence under this section and forming the opinion that an offence has been committed, refer the alleged offence:</p> <p>(a) to the Director of Public Prosecutions, by providing the Director of Public Prosecutions with a brief of evidence relating to the offence, or</p> <p>(b) if the alleged offence relates to the Director of Public Prosecutions, to the Attorney General, by providing the Attorney General with a brief of evidence relating to the offence.</p>
<p><b>19A Interaction between civil remedies and offences</b></p> <p>To avoid doubt, a person may bring proceedings under section 14, 15 or 16 in relation to the taking of a reprisal, or the threat to take a reprisal, even if a prosecution for an offence against section 19 in relation to the reprisal or threat has not been brought, or cannot be brought.</p> <p><b>Subdivision C—Protecting the identity of disclosers</b></p> <p><b>20 Use or disclosure of identifying information</b></p> <p><i>Disclosure of identifying information</i></p> <p>(1) A person (the <b>first person</b>) commits an offence if:</p> <p>(a) another person (the <b>second person</b>) has made a public interest disclosure; and</p> <p>(b) the first person discloses information (<b>identifying information</b>) that:</p> <p>(i) was obtained by any person in that person’s capacity as a public official; and</p> <p>(ii) is likely to enable the identification of the second person as a person who has made a</p>	<p>[No comparable provisions]</p> <p><b>22 Confidentiality guideline</b></p> <p>(1) An investigating authority or public authority (or officer of an investigating authority or public authority) or public official to whom a public interest disclosure is made or referred is not to disclose information that might identify or tend to identify a person who has made the public interest disclosure unless:</p> <p>(a) the person consents in writing to the disclosure of that information, or it is generally known that the person has made the public interest disclosure as a result of the person having voluntarily</p>

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<p>public interest disclosure; and</p> <p>(c) the disclosure is to a person other than the second person. Penalty: Imprisonment for 6 months or 30 penalty units, or both.</p> <p><i>Use of identifying information</i></p> <p>(2) A person (the <b>first person</b>) commits an offence if the person uses identifying information. Penalty: Imprisonment for 6 months or 30 penalty units, or both.</p> <p><i>Exceptions</i></p> <p>(3) Subsections (1) and (2) do not apply if one or more of the following applies:</p> <p>(a) the disclosure or use of the identifying information is for the purposes of this Act;</p> <p>(b) the disclosure or use of the identifying information is in connection with the performance of a function conferred on the Ombudsman by section 5A of the <i>Ombudsman Act 1976</i>;</p> <p>(c) the disclosure or use of the identifying information is in connection with the performance of a function conferred on the IGIS by section 8A of the <i>Inspector-General of Intelligence and Security Act 1986</i>;</p> <p>(d) the disclosure or use of the identifying information is for the purposes of:</p> <p>(i) a law of the Commonwealth; or</p> <p>(ii) a prescribed law of a State or a Territory;</p> <p>(e) the person who is the second person in relation to the identifying information has consented to the disclosure or use of the identifying information;</p> <p>(f) the identifying information has previously been lawfully published.</p> <p>Note: A defendant bears an evidential burden in relation to a matter in subsection (3) (see subsection 13.3(3) of the <i>Criminal Code</i>).</p>	<p>identified themselves (otherwise than by making the public interest disclosure) as the person who made the public interest disclosure, or</p> <p>(b) it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern, or</p> <p>(c) the investigating authority, public authority, officer or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.</p> <p>(2) As part of its procedures for receiving, assessing and dealing with public interest disclosures, a public authority must establish procedures for ensuring that a public official who belongs to the public authority maintains confidentiality in connection with a public interest disclosure made by the public official.</p> <p><b>Note.</b> These procedures are required to be the subject of a policy of the public authority under section 6D.</p>
<p><b>21 Identifying information not to be disclosed etc. to courts or tribunals</b></p> <p>A person who is, or has been, a public official is not to be required:</p> <p>(a) to disclose to a court or tribunal identifying information that the person has obtained; or</p> <p>(b) to produce to a court or tribunal a document containing identifying information that the person has obtained;</p> <p>except where it is necessary to do so for the purposes of giving effect to this Act.</p>	<p>[No comparable provisions]</p>
<p><b>Subdivision D—Interaction with the Fair Work Act 2009</b></p> <p><b>22 Interaction with protections under Part 3-1 of the Fair Work Act 2009</b></p> <p>Without limiting the operation of the <i>Fair Work Act 2009</i>, Part 3-1 of that Act applies in relation to the making of a public interest disclosure by a public official who is an employee (within the meaning of that Part) as if, for the purposes of that Act:</p> <p>(a) this Act were a workplace law; and</p> <p>(b) making that disclosure were a process or proceeding under a workplace law.</p>	<p>[No comparable provisions]</p>
<p><b>22A Interaction with remedies under the Fair Work Act 2009</b></p> <p>(1) A person is not entitled to make an application to the Federal Court or Federal Circuit Court for an order under section 14, 15 or 16 of this Act in relation to particular conduct if another application has been made:</p> <p>(a) under section 539 of the <i>Fair Work Act 2009</i> in relation to a contravention of section 340 or 772 of that Act constituted by the same conduct; or</p> <p>(b) under section 394 of the <i>Fair Work Act 2009</i> in relation to the same conduct.</p>	<p>[No comparable provisions]</p>

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<p>(2) A person is not entitled to apply under:</p> <ul style="list-style-type: none"> <li>(a) section 539 of the <i>Fair Work Act 2009</i> for an order in relation to a contravention of section 340 or 772 of that Act constituted by particular conduct; or</li> <li>(b) section 394 of the <i>Fair Work Act 2009</i> for an order in relation to particular conduct; if another application has been made for an order under section 14, 15 or 16 of this Act in relation to the same conduct.</li> </ul> <p>(3) This section does not apply if the other application mentioned in subsection (1) or (2) has been discontinued or has failed for want of jurisdiction.</p> <p><b>Subdivision E—Miscellaneous</b></p> <p><b>23 Claims for protection</b></p> <p>(1) If, in civil or criminal proceedings (the <i>primary proceedings</i>) instituted against an individual in a court, the individual makes a claim (relevant to the proceedings) that, because of section 10, the individual is not subject to any civil, criminal or administrative liability for making a particular public interest disclosure:</p> <ul style="list-style-type: none"> <li>(a) the individual bears the onus of adducing or pointing to evidence that suggests a reasonable possibility that the claim is made out; and</li> <li>(b) if the individual discharges that onus—the party instituting the primary proceedings against the individual bears the onus of proving that the claim is not made out; and</li> <li>(c) the court must deal with the claim in separate proceedings; and</li> <li>(d) the court must adjourn the primary proceedings until the claim has been dealt with; and</li> <li>(e) none of the following: <ul style="list-style-type: none"> <li>(i) any admission made by the individual in the separate proceedings;</li> <li>(ii) any information given by the individual in the separate proceedings;</li> <li>(iii) any other evidence adduced by the individual in the separate proceedings;</li> </ul> is admissible in evidence against the individual except in proceedings in respect of the falsity of the admission, information or evidence; and</li> <li>(f) if the individual or another person gives evidence in the separate proceedings in support of the claim—giving that evidence does not amount to a waiver of privilege for the purposes of the primary proceedings or any other proceedings.</li> </ul> <p>(2) To avoid doubt, a right under section 126H of the <i>Evidence Act 1995</i> not to be compelled to give evidence is a privilege for the purposes of paragraph (1)(f) of this section.</p> <p><b>24 Protections have effect despite other Commonwealth laws</b></p> <p>Section 10, 14, 15 or 16 has effect despite any other provision of a law of the Commonwealth, unless:</p> <ul style="list-style-type: none"> <li>(a) the provision is enacted after the commencement of this section; and</li> <li>(b) the provision is expressed to have effect despite this Part or that section.</li> </ul> <p><b>Division 2—Public interest disclosures</b></p> <p><b>25 Simplified outline</b></p> <p>The following is a simplified outline of this Division:</p> <div style="border: 1px solid black; padding: 5px;"> <p>The protections in Division 1 apply to public interest disclosures.</p> <p>Broadly speaking, a public interest disclosure is a disclosure of information, by a public</p> </div>	<p><b>20 Protection against reprisals</b></p> <p>(1A) In any proceedings for an offence against this section, it lies on the defendant to prove that detrimental action shown to be taken against a person was not substantially in reprisal for the person making a public interest disclosure.</p> <p><b>24 Other protection preserved</b></p> <p>This Act does not limit the protection given by any other Act or law to a person who makes disclosures of any kind.</p> <p>[No comparable provisions]</p>

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official, that is:

- a disclosure within the government, to an authorised internal recipient or a supervisor, concerning suspected or probable illegal conduct or other wrongdoing (referred to as “disclosable conduct”); or
- a disclosure to anybody, if an internal disclosure of the information has not been adequately dealt with, and if wider disclosure satisfies public interest requirements; or
- a disclosure to anybody if there is substantial and imminent danger to health or safety; or
- a disclosure to an Australian legal practitioner for purposes connected with the above matters.

However, there are limitations to take into account the need to protect intelligence information.

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

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

**Subdivision A—Public interest disclosures**

**26 Meaning of public interest disclosure**

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

**Item 1**

**Type of disclosure:** Internal disclosure

**Recipient:** An authorised internal recipient, or a supervisor of the discloser

**Further requirements:** 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.

**Item 2**

**Type of disclosure:** External disclosure

**Recipient:** Any person other than a foreign public official

**Further requirements:**

- (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) On a previous occasion, the discloser made an internal disclosure of information that consisted of, or included, the information now disclosed.
- (c) Any of the following apply:
  - (i) a disclosure investigation relating to the internal disclosure was conducted under Part 3, and the discloser believes on reasonable grounds that the investigation was inadequate;
  - (ii) a disclosure investigation relating to the internal disclosure was conducted (whether or not under Part 3), and the discloser believes on reasonable grounds that the

**7 Effect of Part**

A disclosure is protected by this Act if it satisfies the applicable requirement of this Part.

**8 Disclosures must be made by public officials**

- (1) To be protected by this Act, a disclosure must be made by a public official:
- (a) to an investigating authority, or
  - (b) to the principal officer of a public authority or investigating authority or officer who constitutes a public authority, or
  - (c) to:
    - (i) another officer of the public authority or investigating authority to which the public official belongs, or
    - (ii) an officer of the public authority or investigating authority to which the disclosure relates, in accordance with any procedure established by the authority concerned for the reporting of allegations of corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention by that authority or any of its officers, or
  - (c1) to the principal officer of the Department of Parliamentary Services, the Department of the Legislative Assembly or the Department of the Legislative Council about the conduct of a member of Parliament, or
  - (d) to a member of Parliament or to a journalist.
- (2) A disclosure is protected by this Act even if it is made about conduct or activities engaged in, or about matters arising, before the commencement of this section.
- (3) A disclosure made while a person was a public official is protected by this Act even if the person who made it is no longer a public official.
- (4) A disclosure made about the conduct of a person while the person was a public official is protected by this Act even if the person is no longer a public official.

**9A Presumptions about beliefs on which disclosures are based**



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<p>response to the investigation was inadequate;</p> <p>(iii) this Act requires an investigation relating to the internal disclosure to be conducted under Part 3, and that investigation has not been completed within the time limit under section 52.</p> <p>(e) The disclosure is not, on balance, contrary to the public interest.</p> <p>(f) No more information is publicly disclosed than is reasonably necessary to identify one or more instances of disclosable conduct.</p> <p>(h) The information does not consist of, or include, intelligence information.</p> <p>(i) None of the conduct with which the disclosure is concerned relates to an intelligence agency.</p> <p><b>Item 3</b>  <b>Type of disclosure:</b> Emergency disclosure  <b>Recipient:</b> Any person other than a foreign public official  <b>Further requirements:</b></p> <p>(a) The discloser believes on reasonable grounds that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the environment.</p> <p>(b) The extent of the information disclosed is no greater than is necessary to alert the recipient to the substantial and imminent danger.</p> <p>(c) If the discloser has not previously made an internal disclosure of the same information, there are exceptional circumstances justifying the discloser’s failure to make such an internal disclosure.</p> <p>(d) If the discloser has previously made an internal disclosure of the same information, there are exceptional circumstances justifying this disclosure being made before a disclosure investigation of the internal disclosure is completed.</p> <p>(f) The information does not consist of, or include, intelligence information.</p> <p><b>Item 4</b>  <b>Type of disclosure:</b> Legal practitioner disclosure  <b>Recipient:</b> An Australian legal practitioner  <b>Further requirements:</b></p> <p>(a) The disclosure is made for the purpose of obtaining legal advice, or professional assistance, from the recipient in relation to the discloser having made, or proposing to make, a public interest disclosure.</p> <p>(b) If the discloser knew, or ought reasonably to have known, that any of the information has a national security or other protective security classification, the recipient holds the appropriate level of security clearance.</p> <p>(c) The information does not consist of, or include, intelligence information.</p> <p>(2) However, a disclosure made before the commencement of this section is not a <b>public interest disclosure</b>.</p> <p>(2A) A response to a disclosure investigation is taken, for the purposes of item 2 of the table in subsection (1), not to be inadequate to the extent that the response involves action that has</p>	<p>(1) For the purposes of determining whether a disclosure by a public official is protected by this Act, an assertion by the public official as to what the public official believes in connection with the disclosure is, in the absence of evidence to the contrary, evidence of the belief asserted and that the belief is an honest belief.</p> <p>(2) Such an assertion need not be express and can be inferred from the nature or content of the disclosure.</p> <p><b>14 Disclosures to public officials</b></p> <p>(1) To be protected by this Act, a disclosure by a public official to the principal officer of, or officer who constitutes, a public authority must be a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention by the authority or any of its officers or by another public authority or any of its officers.</p> <p>(2) To be protected by this Act, a disclosure by a public official to:</p> <p>(a) another officer of the public authority to which the public official belongs, or</p> <p>(b) an officer of the public authority to which the disclosure relates,</p> <p>in accordance with any procedure established by the authority concerned for the reporting of allegations of corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention by that authority or any of its officers must be a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show such corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention (whether by that authority or any of its officers or by another public authority or any of its officers).</p> <p>(2A) To be protected by this Act, a disclosure by a public official to the principal officer of the Department of Parliamentary Services, the Department of the Legislative Assembly or the Department of the Legislative Council about the conduct of a member of Parliament must:</p> <p>(a) be made in accordance with any official procedure established for the reporting of allegations of corrupt conduct, maladministration or serious and substantial waste of public money by a member of Parliament, and</p> <p>(b) be a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by a member of Parliament.</p> <p>(3) In this section:  <b>public authority</b> includes an investigating authority.</p> <p><b>19 Disclosure to a member of Parliament or journalist</b></p> <p>(1) A disclosure by a public official to a member of Parliament, or to a journalist, is protected by this Act if the following subsections apply.</p> <p>(2) The public official making the disclosure must have already made substantially the same disclosure to an investigating authority, public authority or officer of a public authority in accordance with another</p>

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<p>been, is being, or is to be taken by:</p> <ul style="list-style-type: none"> <li>(a) a Minister; or</li> <li>(b) the Speaker of the House of Representatives; or</li> <li>(c) the President of the Senate.</li> </ul> <p>(3) In determining, for the purposes of item 2 of the table in subsection (1), whether a disclosure is not, on balance, contrary to the public interest, regard must be had to the following:</p> <ul style="list-style-type: none"> <li>(aa) whether the disclosure would promote the integrity and accountability of the Commonwealth public sector;</li> <li>(ab) the extent to which the disclosure would expose a failure to address serious wrongdoing in the Commonwealth public sector;</li> <li>(ac) the extent to which it would assist in protecting the discloser from adverse consequences relating to the disclosure if the disclosure were a public interest disclosure;</li> <li>(ad) the principle that disclosures by public officials should be properly investigated and dealt with;</li> <li>(ae) the nature and seriousness of the disclosable conduct;</li> <li>(a) any risk that the disclosure could cause damage to any of the following: <ul style="list-style-type: none"> <li>(i) the security of the Commonwealth;</li> <li>(ii) the defence of the Commonwealth;</li> <li>(iii) the international relations of the Commonwealth;</li> <li>(iv) the relations between the Commonwealth and a State;</li> <li>(v) the relations between the Commonwealth and the Australian Capital Territory;</li> <li>(vi) the relations between the Commonwealth and the Northern Territory;</li> <li>(vii) the relations between the Commonwealth and Norfolk Island;</li> </ul> </li> <li>(b) if any of the information disclosed in the disclosure is Cabinet information—the principle that Cabinet information should remain confidential unless it is already lawfully publicly available;</li> <li>(c) if any of the information disclosed in the disclosure was communicated in confidence by or on behalf of: <ul style="list-style-type: none"> <li>(i) a foreign government; or</li> <li>(ii) an authority of a foreign government; or</li> <li>(iii) an international organisation;</li> </ul> <p>the principle that such information should remain confidential unless that government, authority or organisation, as the case may be, consents to the disclosure of the information;</p> </li> <li>(d) any risk that the disclosure could prejudice the proper administration of justice;</li> <li>(e) the principle that legal professional privilege should be maintained;</li> <li>(f) any other relevant matters.</li> </ul> <p><b>27 Associated allegations</b></p> <p>An allegation is a <b>public interest disclosure</b> if:</p> <ul style="list-style-type: none"> <li>(a) it is made by a person who makes a disclosure of information that is a public interest disclosure under section 26; and</li> </ul>	<p>provision of this Part.</p> <ul style="list-style-type: none"> <li>(3) The investigating authority, public authority or officer to whom the disclosure was made or, if the matter was referred, the investigating authority, public authority or officer to whom the matter was referred: <ul style="list-style-type: none"> <li>(a) must have decided not to investigate the matter, or</li> <li>(b) must have decided to investigate the matter but not completed the investigation within 6 months of the original disclosure being made, or</li> <li>(c) must have investigated the matter but not recommended the taking of any action in respect of the matter, or</li> <li>(d) must have failed to notify the person making the disclosure, within 6 months of the disclosure being made, of whether or not the matter is to be investigated.</li> </ul> </li> <li>(4) The public official must have reasonable grounds for believing that the disclosure is substantially true.</li> <li>(5) The disclosure must be substantially true.</li> </ul> <p>[No comparable provisions]</p>

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p>(b) it is made to the recipient of that disclosure in conjunction with that disclosure; and</p> <p>(c) it is an allegation to the effect that the information disclosed concerns one or more instances of disclosable conduct.</p> <p><b>28 How a public interest disclosure may be made</b></p> <p>(1) A public interest disclosure may be made orally or in writing.</p> <p>(2) A public interest disclosure may be made anonymously.</p> <p>(3) A public interest disclosure may be made without the discloser asserting that the disclosure is made for the purposes of this Act.</p> <p><b>Subdivision B—Disclosable conduct</b></p> <p><b>29 Meaning of disclosable conduct</b></p> <p>(1) <b>Disclosable conduct</b> is conduct of a kind mentioned in the following table that is conduct:</p> <p>(a) engaged in by an agency; or</p> <p>(b) engaged in by a public official, in connection with his or her position as a public official; or</p> <p>(c) engaged in by a contracted service provider for a Commonwealth contract, in connection with entering into, or giving effect to, that contract:</p> <p><b>Item 1</b> Conduct that contravenes a law of the Commonwealth, a State or a Territory.</p> <p><b>Item 2</b> Conduct, in a foreign country, that contravenes a law that:</p> <p>(a) is in force in the foreign country; and</p> <p>(b) is applicable to the agency, public official or contracted service provider; and</p> <p>(c) corresponds to a law in force in the Australian Capital Territory.</p> <p><b>Item 3</b> Conduct that:</p> <p>(a) perverts, or is engaged in for the purpose of perverting, or attempting to pervert, the course of justice; or</p> <p>(b) involves, or is engaged in for the purpose of, corruption of any other kind.</p> <p><b>Item 4</b> Conduct that constitutes maladministration, including conduct that:</p> <p>(a) is based, in whole or in part, on improper motives; or</p> <p>(b) is unreasonable, unjust or oppressive; or</p> <p>(c) is negligent.</p> <p><b>Item 5</b> Conduct that is an abuse of public trust</p> <p><b>Item 6</b> Conduct that is:</p> <p>(a) fabrication, falsification, plagiarism, or deception, in relation to:</p> <p>(i) proposing scientific research; or</p> <p>(ii) carrying out scientific research; or</p> <p>(iii) reporting the results of scientific research; or</p> <p>(b) misconduct relating to scientific analysis, scientific evaluation or the giving of scientific</p>	<p>[No comparable provisions]</p> <p><b>14 Disclosures to public officials</b></p> <p>(1) To be protected by this Act, a disclosure by a public official to the principal officer of, or officer who constitutes, a public authority must be a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention by the authority or any of its officers or by another public authority or any of its officers.</p> <p><b>11 Disclosure to Ombudsman concerning maladministration</b></p> <p>(2) For the purposes of this Act, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is:</p> <p>(a) contrary to law, or</p> <p>(b) unreasonable, unjust, oppressive or improperly discriminatory, or</p> <p>(c) based wholly or partly on improper motives.</p>

**Commonwealth Act—[Public Interest Disclosure Act 2013](#)**

**NSW Act—[Public Interest Disclosures Act 1994](#)**

advice.

**Item 7**

Conduct that results in the wastage of:

- (a) public money (within the meaning of the *Financial Management and Accountability Act 1997*); or
- (b) public property (within the meaning of that Act); or
- (c) money of a prescribed authority; or
- (d) property of a prescribed authority.

**Item 8**

Conduct that:

- (a) unreasonably results in a danger to the health or safety of one or more persons; or
- (b) unreasonably results in, or increases, a risk of danger to the health or safety of one or more persons.

**Item 9**

Conduct that:

- (a) results in a danger to the environment; or
- (b) results in, or increases, a risk of danger to the environment.

**Item 10**

Conduct of a kind prescribed by the PID rules.

- (2) Without limiting subsection (1), the following are also **disclosable conduct**:
  - (a) conduct engaged in by a public official that involves, or is engaged in for the purpose of, the public official abusing his or her position as a public official;
  - (b) conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action against the public official.
- (3) For the purposes of this section, it is immaterial:
  - (a) whether conduct occurred before or after the commencement of this section; or
  - (b) if an agency has engaged in conduct—whether the agency has ceased to exist after the conduct occurred; or
  - (c) if a public official has engaged in conduct—whether the public official has ceased to be a public official after the conduct occurred; or
  - (d) if a contracted service provider has engaged in conduct—whether the contracted service provider has ceased to be a contracted service provider after the conduct occurred.

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

- (1) For the purposes of this Act, if an individual is a public official because the individual:
  - (a) is an officer or employee of a contracted service provider for a Commonwealth contract; and
  - (b) provides services for the purposes (whether direct or indirect) of the Commonwealth contract;
 the individual does not engage in conduct in connection with his or her position as such a public official unless the conduct is in connection with entering into, or giving effect to, the contract.

**4A Public officials**

- (1) In this Act, **public official** means:
  - ...
  - (b) an individual who is engaged by a public authority under a contract to provide services to or on behalf of the public authority, or
  - (c) if a corporation is engaged by a public authority under a contract to provide services to or on behalf of the public authority, an employee or officer of the corporation who provides or is to provide the contracted services or any part of those services.
- (2) Without limiting subsection (1) and to avoid doubt, particular examples of public officials are as

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p>(2) A <b>contracted service provider</b> for a Commonwealth contract is:</p> <ul style="list-style-type: none"> <li>(a) a person who: <ul style="list-style-type: none"> <li>(i) is a party to the Commonwealth contract; and</li> <li>(ii) is responsible for the provision of goods or services under the Commonwealth contract; or</li> </ul> </li> <li>(b) a person who: <ul style="list-style-type: none"> <li>(i) is a party to a contract (the <b>subcontract</b>) with a person who is a contracted service provider for the Commonwealth contract under paragraph (a) (or under a previous application of this paragraph); or</li> <li>(ii) who is responsible under the subcontract for the provision of goods or services for the purposes (whether direct or indirect) of the Commonwealth contract.</li> </ul> </li> </ul> <p>(3) A <b>Commonwealth contract</b> is a contract:</p> <ul style="list-style-type: none"> <li>(a) to which the Commonwealth or a prescribed authority is a party; and</li> <li>(b) under which goods or services are to be, or were to be, provided: <ul style="list-style-type: none"> <li>(i) to the Commonwealth or a prescribed authority; or</li> <li>(ii) for or on behalf of the Commonwealth or a prescribed authority, and in connection with the performance of its functions or the exercise of its powers.</li> </ul> </li> </ul> <p><b>31 Disagreements with government policies etc.</b> To avoid doubt, conduct is not <b>disclosable conduct</b> if it relates only to:</p> <ul style="list-style-type: none"> <li>(a) a policy or proposed policy of the Commonwealth Government; or</li> <li>(b) action that has been, is being, or is proposed to be, taken by: <ul style="list-style-type: none"> <li>(i) a Minister; or</li> <li>(ii) the Speaker of the House of Representatives; or</li> <li>(iii) the President of the Senate; or</li> </ul> </li> <li>(c) amounts, purposes or priorities of expenditure or proposed expenditure relating to such a policy or proposed policy, or such action or proposed action; with which a person disagrees.</li> </ul> <p><b>32 Conduct connected with courts or Commonwealth tribunals</b></p> <p>(1) Despite section 29, conduct is not <b>disclosable conduct</b> if it is:</p> <ul style="list-style-type: none"> <li>(a) conduct of a judicial officer; or</li> <li>(b) conduct of: <ul style="list-style-type: none"> <li>(i) the chief executive officer of a court; or</li> <li>(ii) a member of the staff of the chief executive officer of a court; when exercising a power of the court, performing a function of a judicial nature or exercising a power of a judicial nature; or</li> </ul> </li> <li>(c) conduct of: <ul style="list-style-type: none"> <li>(i) a member of a Commonwealth tribunal; or</li> <li>(ii) the chief executive officer of a Commonwealth tribunal; or</li> <li>(iii) a member of the staff of the chief executive officer of a Commonwealth tribunal; when exercising a power of the Commonwealth tribunal; or</li> </ul> </li> <li>(d) any other conduct of, or relating to, a court or Commonwealth tribunal, unless the</li> </ul>	<p>follows:</p> <ul style="list-style-type: none"> <li>(a) a volunteer rural fire fighter who is an officer or other member of a rural fire brigade under the <i>Rural Fires Act 1997</i>,</li> <li>(b) a volunteer officer or volunteer member of an SES unit (within the meaning of the <i>State Emergency Service Act 1989</i>),</li> <li>(c) an officer of the Royal Society for the Prevention of Cruelty to Animals, New South Wales who is an inspector under the <i>Prevention of Cruelty to Animals Act 1979</i>,</li> <li>(d) a person who is employed by a management company for a managed correctional centre (within the meaning of the <i>Crimes (Administration of Sentences) Act 1999</i>) to perform duties at the correctional centre and who is authorised under section 240 of that Act to perform those duties,</li> <li>(e) an accredited certifier (within the meaning of the <i>Environmental Planning and Assessment Act 1979</i>).</li> </ul> <p>(3) A person who is a public official referred to in subsection (1) (b) or (c) is taken, for the purposes of this Act, to belong to the public authority with whom the relevant contract is made.</p> <p><b>17 Disclosures concerning merits of government policy</b></p> <ul style="list-style-type: none"> <li>(1) A disclosure made by a public official that principally involves questioning the merits of government policy is not (despite any other provision of this Part) protected by this Act.</li> <li>(2) In this section, <b>government policy</b> includes the policy of the governing body of a local government authority.</li> </ul> <p>[No comparable provisions]</p>

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p>conduct:</p> <ul style="list-style-type: none"> <li>(i) is of an administrative nature; and</li> <li>(ii) does not relate to the management or hearing of matters before the court or tribunal.</li> </ul> <p>(2) <b>Judicial officer</b> means:</p> <ul style="list-style-type: none"> <li>(a) a Justice of the High Court; or</li> <li>(b) a Judge or Justice of a court created by the Parliament; or</li> <li>(c) a Judge, Justice or Magistrate of a court of a State or Territory.</li> </ul> <p>(3) <b>Member of the staff</b> of the chief executive officer of a court or Commonwealth tribunal means:</p> <ul style="list-style-type: none"> <li>(a) an officer of the court or Commonwealth tribunal (other than the chief executive officer); or</li> <li>(b) a member of the staff of the registry or registries of the court or Commonwealth tribunal; or</li> <li>(c) an officer or employee of an agency whose services are made available to the court or Commonwealth tribunal; or</li> <li>(d) a person prescribed by the PID rules to be a member of the staff of the court or Commonwealth tribunal for the purposes of this Act.</li> </ul> <p>Note: For declaration by class, see subsection 13(3) of the <i>Legislative Instruments Act 2003</i>.</p> <p>(4) For the purposes of subsection (3):</p> <ul style="list-style-type: none"> <li>(a) a judicial officer of a court is not taken to be an officer of the court; and</li> <li>(b) a member of a Commonwealth tribunal is not taken to be an officer of the tribunal; and</li> <li>(c) if a statutory officeholder is a Commonwealth tribunal—the statutory officeholder is not taken to be an officer of the tribunal.</li> </ul> <p><b>33 Conduct connected with intelligence agencies</b> [Not relevant]</p> <p><b>Subdivision C—Internal disclosures: authorised internal recipients</b></p> <p><b>34 Meaning of authorised internal recipient</b></p> <p>The following table sets out who is an <b>authorised internal recipient</b> of a disclosure of information that the discloser believes on reasonable grounds may concern one or more instances of disclosable conduct:</p> <p><b>Item 1</b></p> <p><b>If the conduct with which the disclosure concerned relates to:</b> an agency (other than an intelligence agency, the Ombudsman or the IGIS)</p> <p><b>An authorised officer of any of the following agencies is an authorised internal recipient of the disclosure:</b></p> <ul style="list-style-type: none"> <li>(a) in any case—that agency;</li> <li>(b) the agency to which the discloser belongs, or last belonged;</li> <li>(c) if the discloser believes on reasonable grounds that it would be appropriate for the disclosure to be investigated by the Ombudsman—the Ombudsman;</li> <li>(d) if an investigative agency (other than the Ombudsman or the IGIS) has the power to investigate the disclosure otherwise than under this Act—the investigative agency.</li> </ul> <p><b>Item 2</b></p>	<p>[No comparable provisions]</p> <p><b>10 Disclosure to Commission concerning corrupt conduct</b></p> <p>To be protected by this Act, a disclosure by a public official to the Commission must:</p> <ul style="list-style-type: none"> <li>(a) be made in accordance with the <i>Independent Commission Against Corruption Act 1988</i>, and</li> <li>(b) be a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show that a public authority or another public official has engaged, is engaged or proposes to engage in corrupt conduct.</li> </ul> <p><b>11 Disclosure to Ombudsman concerning maladministration</b></p> <p>(1) To be protected by this Act, a disclosure by a public official to the Ombudsman must:</p> <ul style="list-style-type: none"> <li>(a) be made in accordance with the <i>Ombudsman Act 1974</i>, and</li> <li>(b) be a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on a public authority or another public official, the public authority or public official has engaged, is engaged or proposes to engage in conduct of a kind that amounts to maladministration.</li> </ul> <p>(2) For the purposes of this Act, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is:</p>

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p><b>If the conduct with which the disclosure concerned relates to:</b> an intelligence agency</p> <p><b>An authorised officer of any of the following agencies is an <i>authorised internal recipient</i> of the disclosure:</b></p> <ul style="list-style-type: none"> <li>(a) in any case—the intelligence agency;</li> <li>(b) if the discloser believes on reasonable grounds that it would be appropriate for the disclosure to be investigated by the IGIS—the IGIS;</li> <li>(c) if none of the information is intelligence information, and an investigative agency (other than the Ombudsman or the IGIS) has the power to investigate the disclosure otherwise than under this Act—the investigative agency.</li> </ul> <p><b>Item 3</b></p> <p><b>If the conduct with which the disclosure concerned relates to:</b> the Ombudsman</p> <p><b>An authorised officer of any of the following agencies is an <i>authorised internal recipient</i> of the disclosure:</b> the Ombudsman.</p> <p><b>Item 4</b></p> <p><b>If the conduct with which the disclosure concerned relates to:</b> the IGIS</p> <p><b>An authorised officer of any of the following agencies is an <i>authorised internal recipient</i> of the disclosure:</b> the IGIS.</p> <p>Note 1: For <i>authorised officer</i>, see section 36.</p> <p>Note 2: A discloser may also disclose information to his or her supervisor (who is then obliged under section 60A to give the information to an authorised officer).</p>	<ul style="list-style-type: none"> <li>(a) contrary to law, or</li> <li>(b) unreasonable, unjust, oppressive or improperly discriminatory, or</li> <li>(c) based wholly or partly on improper motives.</li> </ul> <p><b>12 Disclosure to Auditor-General concerning serious and substantial waste</b></p> <ul style="list-style-type: none"> <li>(1) To be protected by this Act, a disclosure by a public official to the Auditor-General must: <ul style="list-style-type: none"> <li>(a) be made in accordance with the <i>Public Finance and Audit Act 1983</i>, and</li> <li>(b) be a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show that an authority or officer of an authority has seriously and substantially wasted public money.</li> </ul> </li> <li>(2) In this section, <b>authority</b> and <b>officer of an authority</b> have the meanings given to those expressions in the <i>Public Finance and Audit Act 1983</i>.</li> </ul> <p><b>12A Disclosure concerning police</b></p> <ul style="list-style-type: none"> <li>(1) To be protected by this Act, a disclosure by a public official to the PIC must: <ul style="list-style-type: none"> <li>(a) be made in accordance with the <i>Police Integrity Commission Act 1996</i>, and</li> <li>(b) be a disclosure that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by a police officer.</li> </ul> </li> <li>(2) To be protected by this Act, a disclosure by a public official to the PIC Inspector must: <ul style="list-style-type: none"> <li>(a) be made in accordance with the <i>Police Integrity Commission Act 1996</i>, and</li> <li>(b) be a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by the PIC, a PIC officer or a PICI officer.</li> </ul> </li> <li>(3) To be protected by this Act, a disclosure by a public official to an investigating authority (being the Auditor-General, the Commission or the Ombudsman) concerning the PIC or a PIC officer must relate to a matter referred by the PIC Inspector to the investigating authority under section 90 (1) (f) of the <i>Police Integrity Commission Act 1996</i>.</li> </ul> <p><b>12B Disclosure concerning local government</b></p> <ul style="list-style-type: none"> <li>(1) To be protected by this Act, a disclosure by a public official to the local government investigating authority must: <ul style="list-style-type: none"> <li>(a) be made in accordance with the <i>Local Government Act 1993</i>, and</li> <li>(b) be a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show corrupt conduct, maladministration, serious and substantial waste of local government money, government information contravention or local government pecuniary interest contravention by any one or more of the following: <ul style="list-style-type: none"> <li>(i) a local government authority,</li> <li>(ii) a delegate of a local government authority,</li> <li>(iii) a councillor (within the meaning of the <i>Local Government Act 1993</i>),</li> <li>(iv) a member of a county council (within the meaning of the <i>Local Government Act 1993</i>),</li> <li>(v) a member of staff of a local government authority.</li> </ul> </li> </ul> </li> <li>(2) In this section, <b>local government money</b> includes all revenue, loans and other money collected, received or held by, for or on account of a local government authority.</li> </ul>

- 12C Disclosure concerning Commission, ICAC Inspector and officers of Commission and ICAC Inspector**
- (1) To be protected by this Act, a disclosure by a public official to the ICAC Inspector must:
    - (a) be made in accordance with the *Independent Commission Against Corruption Act 1988*, and
    - (b) be a disclosure that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by the Commission, an officer of the Commission or an officer of the ICAC Inspector.
  - (2) To be protected by this Act, a disclosure by a public official to an investigating authority (being the Auditor-General or the Ombudsman) concerning the Commission or an officer of the Commission must relate to a matter referred by the ICAC Inspector to the investigating authority under section 57C (f) of the *Independent Commission Against Corruption Act 1988*.
  - (3) Despite section 11, a disclosure by a public official to the Ombudsman that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on the ICAC Inspector, the ICAC Inspector has engaged or proposes to engage in conduct of a kind that amounts to corrupt conduct or maladministration or has seriously and substantially wasted public money is protected by this Act.
  - (4) The Ombudsman may investigate, and report, in accordance with the *Ombudsman Act 1974* on any matter raised by a disclosure made to it that is of a kind referred to in subsection (3).
- 12D Disclosure to Information Commissioner**
- To be protected by this Act, a disclosure by a public official to the Information Commissioner must:
- (a) be made in accordance with the *Government Information (Information Commissioner) Act 2009*, and
  - (b) be disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show that a public authority or another public official has engaged, is engaged or proposes to engage in government information contravention.
- 12E Disclosure concerning Crime Commission, CC Inspector and CC officers and CCI officers**
- (1) To be protected by this Act, a disclosure by a public official to the CC Inspector must:
    - (a) be made in accordance with the *Crime Commission Act 2012*, and
    - (b) be a disclosure that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by the Crime Commission, a CC officer or a CCI officer.
  - (2) To be protected by this Act, a disclosure by a public official to an investigating authority (being the Auditor-General or the Ombudsman) concerning the Crime Commission or a CC officer must relate to a matter referred by the CC Inspector to the investigating authority under section 63 (f) of the *Crime Commission Act 2012*.
  - (3) Despite section 11, a disclosure by a public official to the Ombudsman that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on the CC Inspector, the CC Inspector has engaged or proposes to engage in conduct of a kind that amounts to corrupt conduct or maladministration or has seriously and substantially wasted public money is protected by this Act.
  - (4) The Ombudsman may investigate, and report, in accordance with the *Ombudsman Act 1974* on any



**35 When conduct relates to an agency**

- (1) Conduct *relates* to an agency if the agency, or a public official belonging to the agency at the time of the conduct, engages in the conduct.
- (2) Despite subsection (1), if:
  - (a) an agency (the *subsidiary agency*) is established by or under a law of the Commonwealth for the purpose of assisting, or performing functions connected with, another agency (the *parent agency*); and
  - (b) the subsidiary agency is an unincorporated body that is a board, council, committee, sub-committee or other body;

matter raised by a disclosure made to it that is of a kind referred to in subsection (3).

**13 Disclosures about investigating authorities**

- (1) Despite section 10, a disclosure by a public official to the Commission that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on the Ombudsman, the Ombudsman or an officer of the Ombudsman has engaged, is engaged or proposes to engage in conduct of a kind that amounts to maladministration is protected by this Act.
- (2) The Commission may investigate, and report, in accordance with the *Independent Commission Against Corruption Act 1988* on any matter raised by a disclosure made to it that is of a kind referred to in subsection (1).
- (3) Despite section 11, a disclosure by a public official to the Ombudsman that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show:
  - (c) that the Auditor-General or a member of the staff of the Auditor-General has seriously and substantially wasted public money,
 is protected by this Act.
- (4) The Ombudsman may investigate, and report, in accordance with the *Ombudsman Act 1974* on any matter raised by a disclosure made to it that is of a kind referred to in subsection (3). For the purposes of such an investigation the Ombudsman may engage consultants or other persons for the purpose of getting expert assistance.
- (4A) Despite section 10, a disclosure by a public official to the Commission that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on the PIC Inspector, the PIC Inspector or a PICI officer has engaged or proposes to engage in conduct of a kind that amounts to corrupt conduct or maladministration or has seriously and substantially wasted public money is protected by this Act.
- (4B) The Commission may investigate, and report, in accordance with the *Independent Commission Against Corruption Act 1988* on any matter raised by a disclosure made to it that is of a kind referred to in subsection (4A).
- (5) An investigating authority may decline to investigate or may discontinue the investigation of any matter referred to in this section.
- (6) A disclosure referred to in this section is protected by this Act only if it satisfies all other applicable requirements of this Part.

**26A Transitional disclosure procedure when public authority becomes separate office within another public authority**

- (1) If a public authority becomes a separate office within another public authority (the *new public authority*), a disclosure made to the principal officer of the separate office during the transition period is taken to have been made to the principal officer of the new public authority.
- (2) The *transition period* is the period beginning when the public authority becomes a separate office within the new public authority and ending when either of the following happens:
  - (a) a procedure is established by the new public authority that provides for the reporting of allegations of corrupt conduct, maladministration or serious and substantial waste of public

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p>conduct that would, apart from this subsection, relate to the subsidiary agency is instead taken, for the purposes of this Act, to relate to the parent agency.</p> <p>(3) Despite subsections (1) and (2), if an agency ceases to exist, conduct that occurred before the cessation and that would, apart from this subsection, relate to the agency is instead taken, for the purposes of this Act, to relate to another agency if:</p> <p>(a) the other agency acquired all of the functions of the agency that ceased to exist; or</p> <p>(b) the other agency acquired some of those functions, and the conduct most closely relates to the functions the other agency acquired; or</p> <p>(c) the PID rules prescribe that, for the purposes of this Act, the other agency replaces the agency that ceased to exist.</p> <p>It is immaterial whether the cessation occurred before or after the commencement of this section.</p> <p><b>36 Meaning of authorised officer</b></p> <p>An <b>authorised officer</b>, of an agency, is:</p> <p>(a) the principal officer of the agency; or</p> <p>(b) a public official who:</p> <p>(i) belongs to the agency; and</p> <p>(ii) is appointed, in writing, by the principal officer of the agency as an authorised officer for the purposes of this Act.</p> <p><b>Subdivision D—Intelligence information</b></p> <p><b>41 Meaning of intelligence information</b> [Not relevant]</p> <p><b>PART 3—INVESTIGATIONS</b></p> <p><b>Division 1—Allocating the handling of disclosures</b></p> <p><b>42 Simplified outline</b></p> <p>The following is a simplified outline of this Division:</p> <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <p>If a disclosure is made to an authorised officer of an agency (either directly by the discloser or through a supervisor of the discloser), he or she allocates the handling of the disclosure to one or more agencies.</p> </div> <p>Note 1: In order for a disclosure to be an internal disclosure (one of the types of public interest disclosure), the disclosure must be made to an authorised officer or a supervisor.</p> <p>Note 2: The way a disclosure is allocated (or a refusal to allocate a disclosure) may be the subject of a complaint to the Ombudsman under the <i>Ombudsman Act 1976</i>, or (in the case of an intelligence agency) to the IGIS under the <i>Inspector-General of Intelligence and Security Act 1986</i>.</p> <p><b>43 Authorised officer to allocate the handling of the disclosure</b></p> <p>(1) If a person (the <b>discloser</b>) discloses information:</p> <p>(a) to an authorised officer of an agency (the <b>recipient agency</b>); or</p>	<p>money by officers of the separate office,</p> <p>(b) an existing procedure of the new public authority is varied or confirmed to be applicable to the reporting of allegations of corrupt conduct, maladministration or serious and substantial waste of public money by officers of the separate office.</p> <p>(3) A public authority can be the new public authority under this section even if the public authority is not newly created and even if it is formed by the amalgamation of 2 or more existing public authorities that become separate offices of the new public authority.</p> <p><b>8 Disclosures must be made by public officials</b></p> <p>(1) To be protected by this Act, a disclosure must be made by a public official:</p> <p>...</p> <p>(b) to the principal officer of a public authority or investigating authority or officer who constitutes a public authority, or</p> <p>(c) to:</p> <p>(i) another officer of the public authority or investigating authority to which the public official belongs, or</p> <p>(ii) an officer of the public authority or investigating authority to which the disclosure relates, in accordance with any procedure established by the authority concerned for the reporting of allegations of corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention by that authority or any of its officers.</p> <p>[No comparable provisions]</p> <p>[No comparable provisions]</p> <p><b>15 Protection of misdirected disclosures</b></p> <p>(1) A misdirected disclosure by a public official to an investigating authority that the public official honestly believed (at the time the disclosure was made) was the appropriate investigating authority</p>

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p>(b) to a supervisor of the discloser who then gives the information to the authorised officer; the authorised officer must allocate the handling of the disclosure to one or more agencies (which may be or include the recipient agency).</p> <p>Note 1: For the assistance that authorised officers must give to disclosers, see section 60.</p> <p>Note 2: For the obligation of supervisors to give information to authorised officers, see section 60A.</p> <p>(2) However, subsection (1) does not apply if the authorised officer is satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered to be an internal disclosure.</p> <p>Note: The requirements for an internal disclosure are set out in item 1 of the table in subsection 26(1).</p> <p>(3) In deciding the allocation, the authorised officer must have regard to:</p> <p>(a) the principle that an agency should not handle the disclosure unless any of the following apply:</p> <ol style="list-style-type: none"> <li>in any case—some or all of the disclosable conduct with which the information may be concerned (<b>suspected disclosable conduct</b>) relates to the agency;</li> <li>if the agency is the Ombudsman—some or all of the suspected disclosable conduct relates to an agency other than an intelligence agency or the IGIS;</li> <li>if the agency is the IGIS—some or all of the suspected disclosable conduct relates to an intelligence agency;</li> <li>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</li> </ol> <p>(b) such other matters (if any) as the authorised officer considers relevant.</p> <p>(4) For the purposes of deciding the allocation, the authorised officer may obtain information from such persons, and make such inquiries, as the authorised officer thinks fit.</p> <p>(5) The authorised officer must use his or her best endeavours to decide the allocation within 14 days after the disclosure is made to the authorised officer.</p> <p>(6) The authorised officer must not allocate the disclosure to an agency (other than the recipient agency) unless an authorised officer of that agency has consented to the allocation.</p>	<p>to deal with the matter is a public interest disclosure if:</p> <ol style="list-style-type: none"> <li>the investigating authority (whether because it is not authorised to investigate the matter under the relevant investigation Act or otherwise) refers the disclosure under Part 4 to another investigating authority or to a public official or public authority, or</li> <li>the investigating authority could have referred the disclosure under Part 4 but did not do so because it has power to investigate the matter concerned under the relevant investigation Act.</li> </ol> <p>(2) A <b>misdirected disclosure</b> is a disclosure that is not a public interest disclosure because it was not made to the appropriate investigating authority or public authority (but that would have been a public interest disclosure had it been made to the appropriate investigating authority or public authority).</p> <p><b>25 Referral of disclosures by investigating authorities</b></p> <ol style="list-style-type: none"> <li>An investigating authority may refer any disclosure concerning an allegation of corrupt conduct, maladministration, serious and substantial waste, government information contravention or local government pecuniary interest contravention that is made to it by a public official to another investigating authority or to a public official or public authority considered by the authority to be appropriate in the circumstances, for investigation or other action.</li> <li>The investigating authority must refer such a disclosure if: <ol style="list-style-type: none"> <li>it is not authorised to investigate the matter concerned under the relevant investigation Act, and</li> <li>it is of the opinion that another investigating authority or some public official or public authority may appropriately deal with the matter concerned.</li> </ol> </li> <li>A disclosure may be referred before or after the matter concerned has been investigated and whether or not any investigation of the matter is complete or any findings have been made by the investigating authority.</li> <li>The investigating authority may communicate to the other investigating authority or to the public official or public authority any information the investigating authority has obtained during the investigation (if any) of the matter concerned.</li> <li>The investigating authority may recommend what action should be taken by the other investigating authority or the public official or public authority.</li> <li>The investigating authority is not to refer the disclosure to another investigating authority, or to a public official or public authority, except after taking into consideration the views of the authority, public official or public authority.</li> <li>An investigating authority referring a matter to another investigating authority may enter into arrangements with the other authority: <ol style="list-style-type: none"> <li>to avoid duplication of action, and</li> <li>to allow the resources of both authorities to be efficiently and economically used to take action, and</li> <li>to ensure that action is taken in a manner providing the most effective result.</li> </ol> </li> <li>A public interest disclosure that is referred under this section remains a public interest disclosure after it is referred.</li> </ol> <p><b>26 Referral of disclosures by public officials</b></p>

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p><b>44 Giving notice of the allocation decision</b></p> <p>(1) The authorised officer must inform the principal officer of each agency to which the handling of the disclosure is allocated of:</p> <ul style="list-style-type: none"> <li>(a) the allocation to the agency; and</li> <li>(b) the information that was disclosed; and</li> <li>(c) the suspected disclosable conduct (if any); and</li> <li>(d) if the discloser’s name and contact details are known to the authorised officer, and the discloser consents to the principal officer being informed—the discloser’s name and contact details.</li> </ul> <p>(1A) The authorised officer must also inform:</p> <ul style="list-style-type: none"> <li>(a) if the disclosure is allocated to an agency that is not the Ombudsman, the IGIS or an intelligence agency—the Ombudsman; or</li> <li>(b) if the disclosure is allocated to an intelligence agency—the IGIS;</li> </ul> <p>of the matters of which the principal officer of the agency must be informed under subsection (1).</p> <p>(2) The authorised officer must inform the discloser of the allocation.</p> <p>(3) If, because of subsection 43(2), the authorised officer does not allocate the disclosure, the authorised officer must inform the discloser of:</p> <ul style="list-style-type: none"> <li>(a) the reasons why the disclosure has not been allocated to an agency; and</li> <li>(b) any other courses of action that might be available to the discloser under other laws of the Commonwealth.</li> </ul> <p>(4) Subsection (2) or (3) does not apply if contacting the discloser is not reasonably practicable.</p> <p><b>45 Subsequent allocations</b></p> <p>(1) The authorised officer may, after making a decision under section 43 or this section (the <b>original decision</b>) allocating the handling of the disclosure to one or more agencies, decide to allocate the handling of the disclosure to one or more other agencies.</p> <p>(2) Subsections 43(3) to (6) and section 44 apply in relation to a decision under this section in the</p>	<p>(1) A public official may refer any disclosure concerning an allegation of corrupt conduct, maladministration, serious and substantial waste or government information contravention made to the public official under Part 2 to an investigating authority or to another public official or a public authority considered by the public official to be appropriate in the circumstances, for investigation or other action.</p> <p>(1A) If the public official to whom the disclosure referred to in subsection (1) was made does not belong to the public authority or investigating authority to which the disclosure relates, the public official must refer the disclosure to the principal officer of, or officer who constitutes, the authority concerned, or to an investigating authority, for investigation or other action.</p> <p>(2) The public official may communicate to the investigating authority, the other public official or the public authority any information the public official has obtained during investigation (if any) of the matter concerned.</p> <p>(3) A public interest disclosure that is referred under this section remains a public interest disclosure after it is referred.</p> <p>[No comparable provisions]</p> <p>[No comparable provisions]</p>

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p>same way that they apply in relation to the original decision.</p>	
<p><b>Division 2—The obligation to investigate disclosures</b></p>	
<p><b>46 Simplified outline</b></p>	<p>[No comparable provisions]</p>
<p>The following is a simplified outline of this Division:</p>	
<p>The principal officer of the allocated agency must investigate the disclosure, and prepare a report, within a set time and in accordance with the requirements of this Division.</p> <p>The principal officer may decide not to investigate in particular circumstances in which an investigation is unjustified, or if the agency is an investigative agency that can investigate without using this Act.</p>	
<p>Note: The way a disclosure is investigated (or a refusal to investigate a disclosure) may be the subject of a complaint to the Ombudsman under the <i>Ombudsman Act 1976</i>, or (in the case of an intelligence agency) to the IGIS under the <i>Inspector-General of Intelligence and Security Act 1986</i>.</p>	
<p><b>47 Principal officer must investigate disclosures</b></p>	<p>[No comparable provisions]</p>
<p>(1) The principal officer of an agency must investigate a disclosure if the handling of the disclosure is allocated to the agency under Division 1.</p>	
<p>(2) <b>Investigate</b>, in relation to a disclosure, means investigate (or reinvestigate) whether there are one or more instances of disclosable conduct. The disclosable conduct may relate to:</p>	
<p>(a) the information that is disclosed; or</p>	
<p>(b) information obtained in the course of the investigation.</p>	
<p>(3) For the purposes of subsection (2), an investigation (or reinvestigation) may include consideration of whether a different investigation (or reinvestigation) should be conducted:</p>	
<p>(a) by the agency; or</p>	
<p>(b) by another body;</p>	
<p>under another law of the Commonwealth.</p>	
<p>(4) For the purposes of subsection (3), procedures established under a law of the Commonwealth (other than this Act) are taken to be a law of the Commonwealth.</p>	
<p><b>48 Discretion not to investigate</b></p>	<p>[No comparable provisions]</p>
<p>(1) Despite section 47, the principal officer of the agency may decide not to investigate the disclosure, or (if the investigation has started) not to investigate the disclosure further, if:</p>	
<p>(a) the discloser is not, and has not been, a public official; or</p>	
<p>(c) the information does not, to any extent, concern serious disclosable conduct; or</p>	
<p>(d) the disclosure is frivolous or vexatious; or</p>	
<p>(e) the information is the same, or substantially the same, as information the disclosure of which has been, or is being, investigated as a disclosure investigation; or</p>	
<p>(f) the information concerns disclosable conduct that is the same, or substantially the same, as disclosable conduct that is being investigated under:</p>	
<p>(i) a law of the Commonwealth other than this Act; or</p>	
<p>(ii) the executive power of the Commonwealth;</p>	
<p>and it would be inappropriate to conduct another investigation at the same time; or</p>	
<p>(g) the information concerns disclosable conduct that is the same, or substantially the same, as disclosable conduct that has been investigated under:</p>	

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- (i) a law of the Commonwealth other than this Act; or
  - (ii) the executive power of the Commonwealth;
- and the principal officer is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation; or
- (h) the discloser has informed the principal officer of an agency that the discloser does not wish the investigation of the internal disclosure to be pursued, and the principal officer is reasonably satisfied that there are no matters concerning the disclosure that warrant investigation; or
  - (i) it is impracticable for the disclosure to be investigated:
    - (i) because the discloser’s name and contact details have not been disclosed; or
    - (ii) because the discloser refuses or fails, or is unable, to give, for the purposes of the investigation, such information or assistance as the person who is or will be conducting the investigation asks the discloser to give; or
    - (iii) because of the age of the information.
- (2) If the principal officer decides not to investigate the disclosure, or not to investigate it further, this Act does not, by implication, prevent the information from being investigated otherwise than under this Act.
- (3) For the purposes of subparagraph (1)(f)(i) or (g)(i), procedures established under a law of the Commonwealth (other than this Act) are taken to be a law of the Commonwealth.

**49 Investigative agency using separate investigative powers**

- (1) Despite section 47, if the agency is an investigative agency that has a separate investigative power in relation to the disclosure, the principal officer of the agency may decide:
  - (a) to investigate the disclosure under that separate investigative power; and
  - (b) not to investigate the disclosure, or (if the investigation has started) not to investigate the disclosure further, under this Act.
- (2) A **separate investigative power**, in relation to the disclosure, is a power that an investigative agency has, otherwise than under this Act, to investigate the disclosure.
 

Note 1: Under the *Ombudsman Act 1976*, the Ombudsman has power to investigate a disclosure allocated to the Ombudsman.

Note 2: Under the *Inspector-General of Intelligence and Security Act 1986*, the IGIS has power to investigate a disclosure allocated to the IGIS.
- (3) On completing its investigation of the disclosure under its separate investigative power, the investigative agency must inform:
  - (a) the principal officers of each of the agencies to which any of the suspected disclosable conduct relates; and
  - (b) the discloser;
 that the investigation is complete.
- (4) Paragraph (3)(b) does not apply if contacting the discloser is not reasonably practicable.

**50 Notification to discloser**

- (1) The principal officer of the agency must, as soon as reasonably practicable, inform the discloser of the following (whichever is applicable):
  - (a) that the principal officer is required to investigate the disclosure;

**5 Relationship of this Act and other Acts**

- (1) This Act prevails, to the extent of any inconsistency, over the provisions of any investigation Act.
- (2) However, nothing in this Act otherwise limits or affects the operation of any Act or the exercise of the functions conferred or imposed on an investigating authority or any other person or body under it.
- (3) Nothing in this Act (except section 13 (2), (4) and (4B)) authorises an investigating authority to investigate any complaint that it is not authorised to investigate under the relevant investigation Act.

**27 Notification to person making disclosure**

The investigating authority, public authority or officer to whom a disclosure is made under this Act or, if the disclosure is referred, the investigating authority, public authority or officer to whom the disclosure is referred must notify the person who made the disclosure, within 6 months of the

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p>(b) that the principal officer has decided under section 48 or 49 not to investigate the disclosure under this Division, or not to investigate the disclosure further.</p> <p>(1A) If paragraph (1)(a) applies, the principal officer must inform the discloser of the estimated length of the investigation.</p> <p>(2) If paragraph (1)(b) applies, the principal officer must inform the discloser of:</p> <ol style="list-style-type: none"> <li>the reasons for the decision; and</li> <li>other courses of action that might be available to the discloser under other laws of the Commonwealth.</li> </ol> <p>(3) Despite paragraph (2)(a), the principal officer may delete from the reasons given to the discloser any reasons that would, if contained in a document, cause the document:</p> <ol style="list-style-type: none"> <li>to be exempt for the purposes of Part IV of the <i>Freedom of Information Act 1982</i>; or</li> <li>to have, or be required to have, a national security or other protective security classification; or</li> <li>to contain intelligence information.</li> </ol> <p>(4) The discloser may be informed of a matter under this section in the same document as the discloser is informed of a matter under subsection 44(2).</p> <p>(5) This section does not apply if contacting the discloser is not reasonably practicable.</p>	<p>disclosure being made, of the action taken or proposed to be taken in respect of the disclosure.</p>
<p><b>50A Notification to Ombudsman or IGIS of decision not to investigate</b></p> <p>(1) If:</p> <ol style="list-style-type: none"> <li>the principal officer of the agency has decided under section 48 or 49 not to investigate the disclosure under this Division, or not to investigate the disclosure further; and</li> <li>the agency is not the Ombudsman, the IGIS or an intelligence agency;</li> </ol> <p>the principal officer must inform the Ombudsman of the decision, and of the reasons for the decision.</p> <p>(2) If:</p> <ol style="list-style-type: none"> <li>the principal officer of the agency has decided under section 48 or 49 not to investigate the disclosure under this Division, or not to investigate the disclosure further; and</li> <li>the agency is an intelligence agency;</li> </ol> <p>the principal officer must inform the IGIS of the decision, and of the reasons for the decision.</p>	<p>[No comparable provisions]</p>
<p><b>51 Report of investigation</b></p> <p>(1) On completing an investigation under this Division, the principal officer of the agency must prepare a report of the investigation.</p> <p>(2) The report must set out:</p> <ol style="list-style-type: none"> <li>the matters considered in the course of the investigation; and</li> <li>the duration of the investigation; and</li> <li>the principal officer’s findings (if any); and</li> <li>the action (if any) that has been, is being, or is recommended to be taken; and</li> <li>any claims made about, and any evidence of, detrimental action taken against the discloser, and the agency’s response to those claims and that evidence.</li> </ol> <p>Note 1: For the purposes of paragraph (d), the report might include, for example, a recommendation that an investigation be conducted, under procedures established under subsection 15(3) of the <i>Public Service Act 1999</i>, into whether an APS employee has breached the Code of Conduct under</p>	<p>[No comparable provisions]</p>

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that Act.

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

- (3) In preparing the report, the principal officer must comply with any standards in force under section 74.
- (4) The principal officer must, within a reasonable time after preparing the report, give a copy of the report under subsection (2) to the discloser.
- (5) However, the principal officer may delete from the copy given to the discloser any material:
  - (a) that is likely to enable the identification of the discloser or another person; or
  - (b) the inclusion of which would:
    - (i) result in the copy being a document that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982*; or
    - (ii) result in the copy being a document having, or being required to have, a national security or other protective security classification; or
    - (iii) result in the copy containing intelligence information; or
    - (iv) contravene a designated publication restriction.
- (6) Subsection (4) does not apply if contacting the discloser is not reasonably practicable.

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

- (1) An investigation under this Division must be completed within 90 days after the relevant disclosure was allocated to the agency concerned.
- (2) The investigation is **completed** when the principal officer has prepared the report of the investigation.
- (3) If the agency is not the IGIS or an intelligence agency, the Ombudsman may extend, or further extend, the 90-day period by such additional period (which may exceed 90 days) as the Ombudsman considers appropriate:
  - (a) on the Ombudsman’s own initiative; or
  - (b) if the agency is not the Ombudsman—on application made by the principal officer of the agency; or
  - (c) on application made by the discloser.
- (4) If the agency is the IGIS or an intelligence agency, the IGIS may extend, or further extend, the 90-day period by such additional period (which may exceed 90 days) as the IGIS considers appropriate:
  - (a) on the IGIS’s own initiative; or
  - (b) if the agency is not the IGIS—on application made by the principal officer of the agency; or
  - (c) on application made by the discloser.
- (5) If the 90-day period is extended, or further extended:
  - (a) the Ombudsman or the IGIS, as the case may be, must inform the discloser of the extension or further extension, and of the reasons for the extension or further extension; and
  - (b) the principal officer of the agency must, as soon as reasonably practicable after the extension or further extension, inform the discloser of the progress of the investigation.
- (5A) Subsection (5) does not apply if contacting the discloser is not reasonably practicable.
- (6) Failure to complete the investigation within the time limit under this section does not affect the

[No comparable provisions]



Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p>validity of the investigation.</p> <p><b>53 Conduct of investigations under this Division</b></p> <p>(1) An investigation under this Division by the principal officer of an agency is to be conducted as the person thinks fit.</p> <p>(2) The principal officer may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as the principal officer thinks fit.</p> <p>(3) Despite subsections (1) and (2), in conducting the investigation, the principal officer must comply with any standards in force under section 74.</p> <p>(4) Despite subsections (1) and (2), the principal officer must act in accordance with the Commonwealth Fraud Control Guidelines in force under regulations made for the purposes of section 64 of the <i>Financial Management and Accountability Act 1997</i>, to the extent that:</p> <p>(a) the investigation relates to one or more instances of fraud against the Commonwealth (within the meaning of those Guidelines); and</p> <p>(b) those Guidelines are not inconsistent with this Act (apart from subsections (1) and (2)).</p> <p>(5) Despite subsections (1) and (2):</p> <p>(a) to the extent that the investigation relates to an alleged breach of the Code of Conduct (within the meaning of the <i>Parliamentary Service Act 1999</i>), the principal officer must comply with the procedures established under subsection 15(3) of that Act; and</p> <p>(b) to the extent that the investigation relates to an alleged breach of the Code of Conduct (within the meaning of the <i>Public Service Act 1999</i>), the principal officer must comply with the procedures established under subsection 15(3) of that Act.</p>	<p>[No comparable provisions]</p>
<p><b>54 Adoption of findings of another investigation</b></p> <p>(1) 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:</p> <p>(a) an investigation or inquiry under:</p> <p>(i) a law of the Commonwealth other than this Act; or</p> <p>(ii) the executive power of the Commonwealth; or</p> <p>(b) another investigation under this Part; conducted by the principal officer or any other person.</p> <p>(2) For the purposes of subparagraph (1)(a)(i), procedures established under a law of the Commonwealth (other than this Act) are taken to be a law of the Commonwealth.</p>	<p>[No comparable provisions]</p>
<p><b>Division 3—Miscellaneous</b></p> <p><b>56 Disclosure to a member of an Australian police force</b></p> <p>(1) If, in the course of a disclosure investigation relating to a disclosure, the person conducting the investigation suspects on reasonable grounds that some or all of:</p> <p>(a) the information disclosed, or</p> <p>(b) any other information obtained in the course of the investigation;</p> <p>is evidence of the commission of an offence against a law of the Commonwealth, a State or a Territory, the person may disclose the information, to the extent that it is such evidence, to a member of an Australian police force that is responsible for the investigation of the offence.</p> <p>(2) However, if the offence is punishable by imprisonment for life or by imprisonment for a period</p>	<p>[No comparable provisions]</p>

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p>of at least 2 years, the person must so notify such a member.</p> <p>(3) This section does not, by implication, limit a person’s power to notify a matter to a member of an Australian police force.</p> <p><b>57 Protection of witnesses etc.</b></p> <p>(1) A person is not subject to any criminal or civil liability because the person (voluntarily or otherwise) gives information, produces a document or answers a question if:</p> <p>(a) the person does so when requested to do so by a person conducting a disclosure investigation; and</p> <p>(b) the information, document or answer is relevant to the investigation.</p> <p>Note: The first person may be the person whose disclosure gave rise to the disclosure investigation.</p> <p>(2) This section does not apply to liability for an offence against section 137.1, 137.2, 144.1 or 145.1 of the <i>Criminal Code</i> that relates to the information, document or answer, as the case may be.</p> <p>(3) This section does not apply to proceedings for a breach of a designated publication restriction.</p> <p>Note: For <b>designated publication restriction</b>, see section 8.</p> <p>(4) To avoid doubt, if the information, document or answer relates to the person’s own conduct, this section does not affect his or her liability for the conduct.</p>	<p>[No comparable provisions]</p>
<p><b>PART 4—ADMINISTRATIVE MATTERS</b></p> <p><b>Division 1—Additional obligations and functions</b></p> <p><b>58 Simplified outline</b></p> <p>The following is a simplified outline of this Division:</p> <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <p>This Division promotes the operation of this Act by imposing additional obligations on principal officers, authorised officers, supervisors and public officials, and by conferring additional functions on the Ombudsman and the IGIS.</p> </div> <p>Note: The way the additional obligations are complied with (or non-compliance with the additional obligations) may be the subject of a complaint to the Ombudsman under the <i>Ombudsman Act 1976</i>, or (in the case of an intelligence agency) to the IGIS under the <i>Inspector-General of Intelligence and Security Act 1986</i>.</p> <p><b>59 Additional obligations of principal officers</b></p> <p>(1) The principal officer of an agency must establish procedures for facilitating and dealing with public interest disclosures relating to the agency. The procedures must include:</p> <p>(a) assessing risks that reprisals may be taken against the persons who make those disclosures; and</p> <p>(b) providing for confidentiality of investigative processes.</p> <p>The procedures must comply with the standards made under paragraph 74(1)(a).</p> <p>(2) Procedures established under subsection (1) are not legislative instruments.</p> <p>(3) The principal officer of an agency must take reasonable steps:</p> <p>(a) to protect public officials who belong to the agency from detriment, or threats of detriment, relating to public interest disclosures by those public officials; and</p> <p>(b) to ensure that the number of authorised officers of the agency is sufficient to ensure that they are readily accessible by public officials who belong to the agency; and</p>	<p>[No comparable provisions]</p> <p><b>6D Public interest disclosures policies and guidelines</b></p> <p>(1) Each public authority must have a policy that provides for its procedures for receiving, assessing and dealing with public interest disclosures.</p> <p>(1A) Such a policy must provide that a copy of the policy and an acknowledgment, in writing, of the receipt of the disclosure is to be provided to a person who makes a public interest disclosure, within 45 days after the person makes the disclosure.</p> <p>(2) The Ombudsman may adopt guidelines for the procedures of public authorities for receiving, assessing and dealing with public interest disclosures. The guidelines may include a model policy that provides for those procedures.</p> <p>(3) A public authority must have regard to (but is not bound by) the Ombudsman’s guidelines in formulating a policy for the purposes of this section.</p> <p>(4) Subsection (1A) does not apply in relation to a public interest disclosure:</p> <p>(a) made by a public official in performing his or her day to day functions as that public official, or</p>

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p>(c) to ensure that public officials who belong to the agency are aware of the identity of each authorised officer of the agency.</p> <p>(4) The principal officer of an agency must ensure that appropriate action is taken in response to recommendations in a report under section 51, or any other matters raised in such a report, that relate to the agency.</p>	<p>(b) otherwise made by a public official, under a statutory or other legal obligation.</p>
<p><b>60 Additional obligations of authorised officers</b></p> <p>If:</p> <p>(a) an individual discloses, or proposes to disclose, information to an authorised officer of an agency; and</p> <p>(b) the authorised officer has reasonable grounds to believe that:</p> <p>(i) the information concerns, or could concern, disclosable conduct; and</p> <p>(ii) the individual may be unaware of what this Act requires in order for the disclosure to be an internal disclosure;</p> <p>the authorised officer must:</p> <p>(c) inform the individual that the disclosure could be treated as an internal disclosure for the purposes of this Act; and</p> <p>(d) explain what this Act requires in order for the disclosure to be an internal disclosure; and</p> <p>(e) advise the individual of any orders or directions of which the authorised officer is aware that are designated publication restrictions that may affect disclosure of the information.</p>	<p><b>6E Responsibility of head of public authority</b></p> <p>(1) The head of a public authority is responsible for ensuring that:</p> <p>(a) the public authority has the policy required by section 6D, and</p> <p>(b) the staff of the public authority are aware of the contents of the policy and the protections under this Act for a person who makes a public interest disclosure, and</p> <p>(c) the public authority complies with the policy and the authority’s obligations under this Act, and</p> <p>(d) the policy designates at least one officer of the public authority (who may be the principal officer) as being responsible for receiving public interest disclosures on behalf of the authority.</p> <p>[No comparable provisions]</p>
<p><b>60A Additional obligations of supervisors</b></p> <p>If:</p> <p>(a) a public official discloses information to a supervisor of the public official; and</p> <p>(b) the supervisor has reasonable grounds to believe that the information concerns, or could concern, one or more instances of disclosable conduct; and</p> <p>(c) the supervisor is not an authorised officer of the agency to which the supervisor belongs; the supervisor must, as soon as reasonably practicable, give the information to an authorised officer of the agency.</p>	<p>[No comparable provisions]</p>
<p><b>61 Additional obligations of public officials</b></p> <p>(1) A public official must use his or her best endeavours to assist the principal officer of an agency in the conduct of an investigation under Part 3.</p> <p>(2) A public official must use his or her best endeavours to assist the Ombudsman in the performance of the Ombudsman’s functions under this Act.</p> <p>(3) A public official must use his or her best endeavours to assist the IGIS in the performance of the IGIS’s functions under this Act.</p>	<p>[No comparable provisions]</p>
<p><b>62 Additional functions of the Ombudsman</b></p> <p>The functions of the Ombudsman include:</p> <p>(a) assisting:</p>	<p><b>6B Oversight of Act by Ombudsman</b></p> <p>(1) The Ombudsman has the following functions in connection with the operation of this Act:</p> <p>(a) to promote public awareness and understanding of this Act and to promote the object of this</p>

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<ul style="list-style-type: none"> <li>(i) principal officers of agencies (other than intelligence agencies or the IGIS); and</li> <li>(ii) authorised officers of agencies (other than intelligence agencies or the IGIS); and</li> <li>(iii) public officials who belong to agencies (other than intelligence agencies or the IGIS); and</li> <li>(iv) former public officials who belonged to agencies (other than intelligence agencies or the IGIS);</li> </ul> <p>in relation to the operation of this Act; and</p> <ul style="list-style-type: none"> <li>(b) conducting educational and awareness programs relating to this Act, to the extent to which this Act relates to: <ul style="list-style-type: none"> <li>(i) agencies (other than intelligence agencies or the IGIS); and</li> <li>(ii) public officials who belong to agencies (other than intelligence agencies or the IGIS); and</li> <li>(iii) former public officials who belonged to agencies (other than intelligence agencies or the IGIS); and</li> </ul> </li> <li>(c) assisting the IGIS in relation to the performance of the functions conferred on the IGIS by this Act.</li> </ul> <p>Note: Section 5A of the <i>Ombudsman Act 1976</i> extends the Ombudsman’s functions to cover disclosures of information that have been, or are required to be, allocated under section 43 of this Act (whether or not they are allocated to the Ombudsman), if the disclosable conduct with which the information is concerned relates to an agency other than an intelligence agency or the IGIS.</p>	<p>Act,</p> <ul style="list-style-type: none"> <li>(b) to provide information, advice, assistance and training to public authorities, investigating authorities and public officials on any matters relevant to this Act,</li> <li>(c) to issue guidelines and other publications for the assistance of public authorities and investigating authorities in connection with their functions under this Act,</li> <li>(d) to issue guidelines and other publications for the assistance of public officials in connection with the protections afforded to them under this Act,</li> <li>(e) to monitor and provide reports (<b>monitoring reports</b>) to Parliament on the exercise of functions under this Act and compliance with this Act by public authorities (other than investigating authorities in respect of their functions as investigating authorities),</li> <li>(f) to audit and provide reports (<b>audit reports</b>) to Parliament on the exercise of functions under this Act and compliance with this Act by public authorities (other than investigating authorities in respect of their functions as investigating authorities),</li> <li>(g) to provide reports and recommendations to the Minister about proposals for legislative and administrative changes to further the object of this Act.</li> </ul> <p><b>Note.</b> The Ombudsman is also chairperson of the Steering Committee.</p>
<p><b>63 Additional functions of the IGIS</b> [Not relevant]</p>	<p>[No comparable provisions]</p>
<p><b>Division 2—Treatment of information</b></p>	
<p><b>64 Simplified outline</b></p> <p>The following is a simplified outline of this Division:</p>	<p>[No comparable provisions]</p>
<div style="border: 1px solid black; padding: 5px;"> <p>This Division creates offences relating to the inappropriate use or disclosure of information obtained through processes connected with this Act.</p> </div>	
<p><b>65 Secrecy—general</b></p> <ul style="list-style-type: none"> <li>(1) A person commits an offence if: <ul style="list-style-type: none"> <li>(a) the person has information (<b>protected information</b>) that the person obtained: <ul style="list-style-type: none"> <li>(i) in the course of conducting a disclosure investigation; or</li> <li>(ii) in connection with the performance of a function, or the exercise of a power, by the person under this Act; and</li> </ul> </li> <li>(b) the person: <ul style="list-style-type: none"> <li>(i) discloses the information to another person; or</li> <li>(ii) uses the information.</li> </ul> </li> </ul> </li> </ul> <p>Penalty: Imprisonment for 2 years or 120 penalty units, or both.</p> <ul style="list-style-type: none"> <li>(2) Subsection (1) does not apply if: <ul style="list-style-type: none"> <li>(a) the disclosure or use is for the purposes of this Act; or</li> <li>(b) the disclosure or use is for the purposes of, or in connection with, the performance of a function, or the exercise of a power, of the person under this Act; or</li> <li>(c) the disclosure or use is for the purposes of, or in connection with, taking action in response</li> </ul> </li> </ul>	<p><b>22 Confidentiality guideline</b></p> <ul style="list-style-type: none"> <li>(1) An investigating authority or public authority (or officer of an investigating authority or public authority) or public official to whom a public interest disclosure is made or referred is not to disclose information that might identify or tend to identify a person who has made the public interest disclosure unless: <ul style="list-style-type: none"> <li>(a) the person consents in writing to the disclosure of that information, or it is generally known that the person has made the public interest disclosure as a result of the person having voluntarily identified themselves (otherwise than by making the public interest disclosure) as the person who made the public interest disclosure, or</li> <li>(b) it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern, or</li> <li>(c) the investigating authority, public authority, officer or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.</li> </ul> </li> <li>(2) As part of its procedures for receiving, assessing and dealing with public interest disclosures, a public</li> </ul>

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p>to a disclosure investigation; or</p> <p>(d) the protected information has previously been lawfully published, and is not intelligence information; or</p> <p>(e) the protected information is intelligence information that has previously been lawfully published, and the disclosure or use occurs with the consent of the principal officer of the agency referred to in section 66 as the source agency for the intelligence information.</p> <p>Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the <i>Criminal Code</i>).</p> <p>(3) Except where it is necessary to do so for the purposes of giving effect to this Act or another law of the Commonwealth, a person is not to be required:</p> <p>(a) to produce to a court or tribunal a document containing protected information; or</p> <p>(b) to disclose protected information to a court or tribunal.</p> <p><b>66 Source agencies for intelligence information</b> [Not relevant]</p> <p><b>67 Secrecy—legal practitioners</b></p> <p>(1) A person commits an offence if:</p> <p>(a) the person has obtained information in the person’s capacity as the recipient of a public interest disclosure covered by item 4 of the table in subsection 26(1) (a <b>legal practitioner disclosure</b>); and</p> <p>(b) the person:</p> <p>(i) discloses the information to another person; or</p> <p>(ii) uses the information.</p> <p>Penalty: Imprisonment for 2 years or 120 penalty units, or both.</p> <p>(2) Subsection (1) does not apply if:</p> <p>(a) the disclosure or use is for the purpose of providing legal advice, or professional assistance, relating to a public interest disclosure (other than a legal practitioner disclosure) made, or proposed to be made, by the person who made the legal practitioner disclosure referred to in paragraph (1)(a); or</p> <p>(b) the information has previously been lawfully published.</p> <p>Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the <i>Criminal Code</i>).</p> <p><b>Division 3—Officials and agencies</b></p> <p><b>68 Simplified outline</b></p> <p>The following is a simplified outline of this Division:</p> <div style="border: 1px solid black; padding: 5px;"> <p>This Division defines the key concepts of public official, agency, prescribed authority and principal officer.</p> </div> <p><b>Subdivision A—Public officials</b></p> <p><b>69 Public officials</b></p> <p>(1) For the purposes of this Act:</p> <p>(a) a <b>public official</b> means an individual mentioned in column 1 of an item of the following table; and</p> <p>(b) the public official <b>belongs</b> to the agency mentioned in column 2 of the item.</p> <p><b>Item 1</b></p>	<p>authority must establish procedures for ensuring that a public official who belongs to the public authority maintains confidentiality in connection with a public interest disclosure made by the public official.</p> <p><b>Note.</b> These procedures are required to be the subject of a policy of the public authority under section 6D.</p> <p>[No comparable provisions]</p> <p>[No comparable provisions]</p> <p>[No comparable provisions]</p> <p>[No comparable provisions]</p> <p><b>4A Public officials</b></p> <p>(1) In this Act, <b>public official</b> means:</p> <p>(a) an individual who is an employee of or otherwise in the service of a public authority, and includes (without limitation) each of the following:</p> <p>(i) a person employed under the <i>Public Sector Employment and Management Act 2002</i>,</p> <p>(ii) a member of Parliament, but not for the purposes of a disclosure made by the member,</p>

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p><b>Public official:</b> A Secretary of a Department.  <b>Agency to which the public official belongs:</b> The Department.</p> <p><b>Item 2</b>  <b>Public official:</b> An APS employee in a Department.  <b>Agency to which the public official belongs:</b> The Department.</p> <p><b>Item 3</b>  <b>Public official:</b> A Head of an Executive Agency.  <b>Agency to which the public official belongs:</b> The Executive Agency.</p> <p><b>Item 4</b>  <b>Public official:</b> An APS employee in an Executive Agency.  <b>Agency to which the public official belongs:</b> The Executive Agency.</p> <p><b>Item 5</b>  <b>Public official:</b> A principal officer of a prescribed authority.  <b>Agency to which the public official belongs:</b> The prescribed authority.</p> <p><b>Item 6</b>  <b>Public official:</b> A member of the staff of a prescribed authority (including an APS employee in the prescribed authority).  <b>Agency to which the public official belongs:</b> The prescribed authority.</p> <p><b>Item 7</b>  <b>Public official:</b> An individual who constitutes a prescribed authority.  <b>Agency to which the public official belongs:</b> The prescribed authority.</p> <p><b>Item 8</b>  <b>Public official:</b> A member of a prescribed authority (other than a court).  <b>Agency to which the public official belongs:</b> The prescribed authority.</p> <p><b>Item 9</b>  <b>Public official:</b> A director of a Commonwealth company.  <b>Agency to which the public official belongs:</b> The Commonwealth company.</p> <p><b>Item 10</b>  <b>Public official:</b> A member of the Defence Force.  <b>Agency to which the public official belongs:</b> The Defence Department.</p> <p><b>Item 11</b>  <b>Public official:</b> An AFP appointee (within the meaning of the <i>Australian Federal Police Act 1979</i>).  <b>Agency to which the public official belongs:</b> The Australian Federal Police.</p> <p><b>Item 12</b>  <b>Public official:</b> A Parliamentary Service employee (within the meaning of the <i>Parliamentary Service Act 1999</i>).  <b>Agency to which the public official belongs:</b> The Department in which the Parliamentary service employee is employed.</p> <p><b>Item 13</b>  <b>Public official:</b> An individual who:            (a) is employed by the Commonwealth otherwise than as an APS employee; and</p>	<p>(iii) a person employed by either or both of the President of the Legislative Council or the Speaker of the Legislative Assembly,</p> <p>(iv) any other individual having public official functions or acting in a public official capacity whose conduct and activities may be investigated by an investigating authority,</p> <p>(v) an individual in the service of the Crown, or</p> <p>(b) an individual who is engaged by a public authority under a contract to provide services to or on behalf of the public authority, or</p> <p>(c) if a corporation is engaged by a public authority under a contract to provide services to or on behalf of the public authority, an employee or officer of the corporation who provides or is to provide the contracted services or any part of those services.</p> <p>(2) Without limiting subsection (1) and to avoid doubt, particular examples of public officials are as follows:</p> <p>(a) a volunteer rural fire fighter who is an officer or other member of a rural fire brigade under the <i>Rural Fires Act 1997</i>,</p> <p>(b) a volunteer officer or volunteer member of an SES unit (within the meaning of the <i>State Emergency Service Act 1989</i>),</p> <p>(c) an officer of the Royal Society for the Prevention of Cruelty to Animals, New South Wales who is an inspector under the <i>Prevention of Cruelty to Animals Act 1979</i>,</p> <p>(d) a person who is employed by a management company for a managed correctional centre (within the meaning of the <i>Crimes (Administration of Sentences) Act 1999</i>) to perform duties at the correctional centre and who is authorised under section 240 of that Act to perform those duties,</p> <p>(e) an accredited certifier (within the meaning of the <i>Environmental Planning and Assessment Act 1979</i>).</p> <p>(3) A person who is a public official referred to in subsection (1) (b) or (c) is taken, for the purposes of this Act, to belong to the public authority with whom the relevant contract is made.</p>

**Commonwealth Act—[Public Interest Disclosure Act 2013](#)**

(b) performs duties for a Department, Executive Agency or prescribed authority.

**Agency to which the public official belongs:** The Department, Executive Agency or prescribed authority.

**Item 14**

**Public official:** A statutory officeholder, other than an individual covered by any of the above items.

**Agency to which the public official belongs:** Whichever of the following agencies is applicable:

- (a) if the statutory officeholder is a deputy (however described) of the principal officer of an agency—that agency;
- (b) if the statutory officeholder performs the duties of his or her office as duties of his or her employment as an officer of or under an agency—that agency;
- (c) otherwise—the agency ascertained in accordance with the PID rules.

**Item 15**

**Public official:** An individual who is a contracted service provider for a Commonwealth contract.

**Agency to which the public official belongs:** Whichever of the following agencies is applicable:

- (a) if the relevant services are to be, or were to be, provided wholly or principally for the benefit of an agency, or of a party to a contract with an agency—that agency;
- (b) otherwise—the agency ascertained in accordance with the PID rules.

**Item 16**

**Public official:** An individual who:

- (a) is an officer or employee of a contracted service provider for a Commonwealth contract; and
- (b) provides services for the purposes (whether direct or indirect) of the Commonwealth contract.

**Agency to which the public official belongs:** Whichever of the following agencies is applicable:

- (a) if the relevant services are to be, or were to be, provided wholly or principally for the benefit of an agency, or of a party to a contract with an agency—that agency;
- (b) otherwise—the agency ascertained in accordance with the PID rules.

**Item 17**

**Public official:** An individual (other than a statutory officeholder, a judicial officer or an official of a registered industrial organisation) who exercises powers, or performs functions, conferred on the individual by or under a law of the Commonwealth, other than:

- (a) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or
- (b) the *Australian Capital Territory (Self-Government) Act 1988*; or
- (c) the *Corporations Act 2001*; or
- (d) the *Norfolk Island Act 1979*; or
- (e) the *Northern Territory (Self-Government) Act 1978*; or
- (f) a provision prescribed by the PID rules.

**Agency to which the public official belongs:** The Department administered by the Minister administering that law.

**Item 18**

**NSW Act—[Public Interest Disclosures Act 1994](#)**

Commonwealth Act— <a href="#">Public Interest Disclosure Act 2013</a>	NSW Act— <a href="#">Public Interest Disclosures Act 1994</a>
<p><b>Public official:</b> An individual (other than a judicial officer) who exercises powers, or performs functions, conferred on the individual under a law in force in the Territory of Christmas Island (whether the law is a law of the Commonwealth or a law of the Territory).</p> <p><b>Agency to which the public official belongs:</b> The Department administered by the Minister administering the <i>Christmas Island Act 1958</i>.</p> <p><b>Item 19</b></p> <p><b>Public official:</b> An individual (other than a judicial officer) who exercises powers, or performs functions, conferred on the individual under a law in force in the Territory of Cocos (Keeling) Islands (whether the law is a law of the Commonwealth or a law of the Territory).</p> <p><b>Agency to which the public official belongs:</b> The Department administered by the Minister administering the <i>Cocos (Keeling) Islands Act 1955</i>.</p> <p><b>Item 20</b></p> <p><b>Public official:</b> The Registrar, or a Deputy Registrar, of Aboriginal and Torres Strait Islander Corporations.</p> <p><b>Agency to which the public official belongs:</b> The Department administered by the Minister administering the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>.</p> <p>(2) A <b>statutory officeholder</b> means an individual (other than a judicial officer or an official of a registered industrial organisation) who holds or performs the duties of an office established by or under a law of the Commonwealth, other than:</p> <ul style="list-style-type: none"> <li>(a) the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>; or</li> <li>(b) the <i>Australian Capital Territory (Self-Government) Act 1988</i>; or</li> <li>(c) the <i>Corporations Act 2001</i>; or</li> <li>(d) the <i>Norfolk Island Act 1979</i> (except section 51D of that Act); or</li> <li>(e) the <i>Northern Territory (Self-Government) Act 1978</i>.</li> </ul> <p>(3) For the purposes of item 6 of the table in subsection (1):</p> <ul style="list-style-type: none"> <li>(a) a person who is a member of the staff referred to in subsection 31(1) of the <i>Ombudsman Act 1976</i> is taken to be a member of the staff of the Ombudsman; and</li> <li>(b) a person who is a member of the staff referred to in subsection 32(1) of the <i>Inspector-General of Intelligence and Security Act 1986</i> is taken to be a member of the staff of the IGIS; and</li> <li>(c) a staff member of the Australian Commission for Law Enforcement Integrity is taken to be a member of the staff of the Integrity Commissioner.</li> </ul> <p>(4) To avoid doubt, a judicial officer, or a member of a Royal Commission, is not a <b>public official</b> for the purposes of this Act.</p> <p><b>70 Individuals taken to be public officials</b></p> <p>(1) If:</p> <ul style="list-style-type: none"> <li>(a) an authorised officer of an agency believes, on reasonable grounds, that an individual has information that concerns disclosable conduct; and</li> <li>(b) apart from this subsection, the individual was not a public official when the individual obtained the information; and</li> <li>(c) the individual has disclosed, or proposes to disclose, the information to the authorised</li> </ul>	<p>[No comparable provisions]</p>



**Commonwealth Act—[Public Interest Disclosure Act 2013](#)**

**NSW Act—[Public Interest Disclosures Act 1994](#)**

officer;

the authorised officer may, by written notice given to the individual, determine that this Act has effect, and is taken always to have had effect, in relation to the disclosure of the information by the individual, as if the individual had been a public official when the person obtained the information.

- (2) The authorised officer may make the determination:
- (a) on a request being made to the authorised officer by the individual; or
  - (b) on the authorised officer’s own initiative.
- (3) If the individual requests an authorised officer of an agency to make the determination, the authorised officer must, after considering the request:
- (a) make the determination, and inform the individual accordingly; or
  - (b) refuse to make the determination, and inform the individual of the refusal and the reasons for the refusal.
- (3A) This section does not apply if the individual is a judicial officer or is a member of a Royal Commission.
- (4) A determination under this section is not a legislative instrument.

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

**Subdivision B—Agencies and prescribed authorities**

**71 Meaning of *agency***

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

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

**72 Meaning of *prescribed authority***

*Prescribed authorities*

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

**4 Definitions**

**public authority** means any public authority whose conduct or activities may be investigated by an investigating authority, and includes (without limitation) each of the following:

- (a) a Division of the Government Service,
- (b) a State owned corporation and any subsidiary of a State owned corporation,
- (c) a local government authority,
- (d) the NSW Police Force, PIC and PIC Inspector,
- (e) the Department of Parliamentary Services, the Department of the Legislative Assembly and the Department of the Legislative Council.

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<p>(p) any body that:</p> <ul style="list-style-type: none"> <li>(i) is established by a law of the Commonwealth; and</li> <li>(ii) is prescribed by the PID rules; or</li> </ul> <p>(q) subject to subsection (2), the person holding, or performing the duties of, an office that:</p> <ul style="list-style-type: none"> <li>(i) is established by a law of the Commonwealth; and</li> <li>(ii) is prescribed by the PID rules.</li> </ul> <p><i>Exceptions</i></p> <p>(2) For the purposes of this Act, a person is not a prescribed authority because he or she holds, or performs the duties of:</p> <ul style="list-style-type: none"> <li>(a) an office the duties of which he or she performs as duties of his or her employment as an officer of a Department or as an officer of or under a prescribed authority; or</li> <li>(b) an office of member of a body; or</li> <li>(c) an office established by a law of the Commonwealth for the purposes of a prescribed authority.</li> </ul> <p>(3) For the purposes of this Act, a Royal Commission is not a prescribed authority.</p> <p><i>Intelligence agencies</i></p> <p>(4) For the purposes of this Act, each of the following is taken to be a prescribed authority in its own right, and not to be part of the Defence Department:</p> <ul style="list-style-type: none"> <li>(a) the Defence Imagery and Geospatial Organisation;</li> <li>(b) the Defence Intelligence Organisation;</li> <li>(c) the Defence Signals Directorate.</li> </ul> <p><b>Subdivision C—Principal officers</b></p> <p><b>73 Meaning of <i>principal officer</i></b></p> <p>(1) For the purposes of this Act, the <i>principal officer</i> of an agency mentioned in column 1 of an item in the following table is the person specified in column 2 of the item.</p> <p><b><u>Item 1</u></b>  <b>Agency:</b> A Department.  <b>Principal officer:</b> The Secretary of the Department.</p> <p><b><u>Item 2</u></b>  <b>Agency:</b> An Executive Agency.  <b>Principal officer:</b> The Head of the Executive Agency.</p> <p><b><u>Item 3</u></b>  <b>Agency:</b> A prescribed authority of a kind mentioned in paragraph 72(1)(a), (b), (c), (e), (f), (g), (h), (i), (j), (k) or (p).  <b>Principal officer:</b> Whichever of the following individuals is applicable:</p> <ul style="list-style-type: none"> <li>(a) the chief executive officer (however described) of the prescribed authority;</li> <li>(b) if another individual is ascertained in accordance with the PID rules—that other individual.</li> </ul> <p><b><u>Item 4</u></b>  <b>Agency:</b> The Australian Federal Police.  <b>Principal officer:</b> The Commissioner of Police (within the meaning of the <i>Australian Federal Police Act 1979</i>).</p>	<p><b>6E Responsibility of head of public authority</b></p> <p>...</p> <p>(2) In this section, head of a <b>public authority</b> means:</p> <ul style="list-style-type: none"> <li>(a) for a local government authority—the General Manager of the authority, or</li> <li>(b) for the Department of the Legislative Assembly—the Speaker of the Legislative Assembly, or</li> <li>(c) for the Department of the Legislative Council—the President of the Legislative Council, or</li> <li>(d) for the Department of Parliamentary Services—the Speaker of the Legislative Assembly and the President of the Legislative Council, or</li> <li>(e) for a Division of the Government Service—the Division Head in relation to the Division, or</li> <li>(f) a person who is prescribed by the regulations as the head of a public authority for the purposes of this section, or</li> <li>(g) for any other public authority—the chief executive officer or other principal officer of the authority.</li> </ul>

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**Item 5**

**Agency:** The High Court or any court created by the Parliament.

**Principal officer:** The chief executive officer of the court.

**Item 6**

**Agency:** The Office of Official Secretary to the Governor-General

**Principal officer:** The Official Secretary to the Governor-General.

**Item 7**

**Agency:** The Ombudsman.

**Principal officer:** The Ombudsman.

**Item 8**

**Agency:** The IGIS.

**Principal officer:** The IGIS.

**Item 9**

**Agency:** A prescribed authority that is constituted by an individual.

**Principal officer:** The individual.

(2) For the purposes of this Act:

- (a) the Chief Executive and Principal Registrar of the High Court is the **chief executive officer** of the High Court; and
- (b) the Registrar of the Federal Court is the **chief executive officer** of the Federal Court; and
- (c) the Chief Executive Officer of the Family Court of Australia and the Federal Circuit Court is:
  - (i) the **chief executive officer** of the Family Court of Australia; and
  - (ii) the **chief executive officer** of the Federal Circuit Court; and
- (d) the PID rules may provide that the **chief executive officer** of another specified court is the person holding, or performing the duties of, a specified office; and
- (e) the Registrar of the Administrative Appeals Tribunal is the **chief executive officer** of the Administrative Appeals Tribunal; and
- (f) the PID rules may provide that the **chief executive officer** of another specified Commonwealth tribunal is the person holding, or performing the duties of, a specified office.

**PART 5—MISCELLANEOUS**

**74 Ombudsman may determine standards**

- (1) The Ombudsman may, by legislative instrument, determine standards relating to the following:
  - (a) procedures, to be complied with by the principal officers of agencies, for dealing with internal disclosures and possible internal disclosures;
  - (b) the conduct of investigations under this Act;
  - (c) the preparation, under section 51, of reports of investigations under this Act;
  - (d) the giving of information and assistance under subsection 76(3), and the keeping of records for the purposes of that subsection.
- (2) Before determining a standard, the Ombudsman must consult the IGIS.
- (3) The Ombudsman must ensure that standards are in force under each of paragraphs (1)(a), (b)

**6B Oversight of Act by Ombudsman**

- (1) The Ombudsman has the following functions in connection with the operation of this Act:
  - (a) to promote public awareness and understanding of this Act and to promote the object of this Act,
  - (b) to provide information, advice, assistance and training to public authorities, investigating authorities and public officials on any matters relevant to this Act,
  - (c) to issue guidelines and other publications for the assistance of public authorities and investigating authorities in connection with their functions under this Act,
  - (d) to issue guidelines and other publications for the assistance of public officials in connection with the protections afforded to them under this Act,

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and (c) at all times after the commencement of this section.

**75 Restriction on the application of secrecy provisions**

- (1) A provision of a law of the Commonwealth that prohibits the disclosure, recording or use of information does not apply to the disclosure, recording or use of information if:
- (a) the disclosure, recording or use is in connection with the conduct of a disclosure investigation; or
  - (b) the disclosure, recording or use is for the purposes of the performance of the functions, or the exercise of the powers, conferred on a person by Part 3 or section 61; or
  - (c) the disclosure, recording or use is in connection with giving a person access to information for the purposes of, or in connection with, the performance of the functions, or the exercise of the powers, conferred on the person by Part 3 or section 61; and the disclosure, recording or use is not contrary to a designated publication restriction.
- Note: For **designated publication restriction**, see section 8.
- (2) However, this section does not apply if:
- (a) the provision is enacted after the commencement of this section; and
  - (b) the provision is expressed to have effect despite this section.

**76 Annual report**

- (1) The Ombudsman must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to Parliament, a report on the operation of this Act during that financial year.
- Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.
- (2) The report must include:
- (a) in relation to each agency, statements of the following:
    - (i) the number of public interest disclosures received by authorised officers of the agency during the financial year;
    - (ii) the kinds of disclosable conduct to which those disclosures relate;
    - (iii) the number of disclosure investigations that the principal officer of the agency conducted during the financial year;
    - (iv) the actions that the principal officer of the agency has taken during the financial year in response to recommendations in reports relating to those disclosure investigations; and
  - (b) a statement of the number and nature of the complaints made to the Ombudsman during the financial year about the conduct of agencies in relation to public interest disclosures;

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- (e) to monitor and provide reports (**monitoring reports**) to Parliament on the exercise of functions under this Act and compliance with this Act by public authorities (other than investigating authorities in respect of their functions as investigating authorities),
- (f) to audit and provide reports (**audit reports**) to Parliament on the exercise of functions under this Act and compliance with this Act by public authorities (other than investigating authorities in respect of their functions as investigating authorities),
- (g) to provide reports and recommendations to the Minister about proposals for legislative and administrative changes to further the object of this Act.

**Note.** The Ombudsman is also chairperson of the Steering Committee.

[No comparable provisions]

**6B Oversight of Act by Ombudsman**

- (1) The Ombudsman has the following functions in connection with the operation of this Act:
- (a) to promote public awareness and understanding of this Act and to promote the object of this Act,
  - (b) to provide information, advice, assistance and training to public authorities, investigating authorities and public officials on any matters relevant to this Act,
  - (c) to issue guidelines and other publications for the assistance of public authorities and investigating authorities in connection with their functions under this Act,
  - (d) to issue guidelines and other publications for the assistance of public officials in connection with the protections afforded to them under this Act,
  - (e) to monitor and provide reports (**monitoring reports**) to Parliament on the exercise of functions under this Act and compliance with this Act by public authorities (other than investigating authorities in respect of their functions as investigating authorities),
  - (f) to audit and provide reports (**audit reports**) to Parliament on the exercise of functions under this Act and compliance with this Act by public authorities (other than investigating authorities in respect of their functions as investigating authorities),
  - (g) to provide reports and recommendations to the Minister about proposals for legislative and administrative changes to further the object of this Act.

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<p>and</p> <p>(c) information about the Ombudsman’s performance of its functions under section 62; and</p> <p>(d) information about the IGIS’s performance of its functions under section 63.</p> <p>(3) The principal officer of an agency must give the Ombudsman such information and assistance as the Ombudsman reasonably requires in relation to the preparation of a report under this section.</p> <p>(4) Despite subsection (3), the principal officer may delete from a document given to the Ombudsman under that section any material:</p> <p>(a) that is likely to enable the identification of a person who has made a public interest disclosure or another person; or</p> <p>(b) the inclusion of which would:</p> <p>(i) result in the document being a document that is exempt for the purposes of Part IV of the <i>Freedom of Information Act 1982</i>; or</p> <p>(ii) result in the document being a document having, or being required to have, a national security or other protective security classification.</p> <p>(5) A report under this section in relation to a financial year may be 20 included in a report under section 19 of the <i>Ombudsman Act 1976</i> relating to the operations of the Ombudsman during that year.</p>	<p><b>Note.</b> The Ombudsman is also chairperson of the Steering Committee.</p> <p>(2) A monitoring report is to be provided once every 12 months. An audit report is to be provided whenever the Ombudsman considers it desirable to do so and at least once every 12 months.</p> <p>(3) The Ombudsman must, as soon as practicable after 30 June in each year, prepare and provide a report to Parliament on the Ombudsman’s activities under this section for the preceding 12 months.</p> <p>(4) A report to Parliament under this section can be provided by being included in the Ombudsman’s annual report under section 30 of the <i>Ombudsman Act 1974</i> or can be provided as a separate report and provided to the Presiding Officer of each House of Parliament.</p> <p>(5) Section 31AA of the <i>Ombudsman Act 1974</i> applies to a report to Parliament under this section as if the report were a report made or furnished under Part 4 of that Act.</p> <p><b>6C Provision of information to Ombudsman for audit purposes</b></p> <p>(1) For the purposes of an audit under section 6B, the Ombudsman may require the principal officer of or who constitutes a public authority:</p> <p>(a) to give the Ombudsman a statement of information, or</p> <p>(b) to produce to the Ombudsman any document or other thing under the person’s control, or the production of which the person may, in an official capacity, reasonably require, or</p> <p>(c) to give the Ombudsman a copy of any such document.</p> <p>(2) This section does not apply to the principal officer of the Department of Parliamentary Services, the Department of the Legislative Assembly or the Department of the Legislative Council.</p> <p>(a) A requirement under this section must be in writing, must specify or describe the information, document or thing required, and must fix a time and specify a place for compliance.</p> <p>(b) It is the duty of the principal officer of or who constitutes a public authority to comply with any requirement of the Ombudsman under this section.</p> <p>(5) A provision of any Act or law that prevents or restricts access to records or disclosure of information (other than section 22 or 23 of this Act) does not prevent a person from complying, or affect the person’s duty to comply, with a requirement of the Ombudsman under this section.</p> <p>(6) Anything done by a person in compliance with a requirement of the Ombudsman under this section:</p> <p>(a) does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and</p> <p>(b) does not give rise to any liability for defamation or other civil liability.</p> <p><b>6CA Reports to Ombudsman by public authorities</b></p> <p>(1) Each public authority must provide a report under this section to the Ombudsman for each 6 month period.</p> <p>(2) The report is to provide statistical information on the public authority’s compliance with its obligations under this Act during the 6 month period to which the report relates.</p> <p>(3) The report is to be provided to the Ombudsman within 30 days after the end of the 6 month period to which the report relates, or by such later time as the Ombudsman may approve.</p> <p>(4) The regulations may make provision for or with respect to:</p> <p>(a) the statistical information that is to be provided in a report under this section, and</p> <p>(b) the form in which such a report is to be provided.</p> <p>(5) In this section, <b>6 month period</b> means the period of 6 months ending on 30 June and 31 December in</p>

## 77 Delegations

### *Principal officers*

- (1) The principal officer of an agency (other than the IGIS or the Ombudsman) may, by writing, delegate any or all of his or her functions or powers under this Act to a public official who belongs to the agency.
- ### *Ombudsman*
- (2) The Ombudsman may, by writing, delegate any or all of his or her functions or powers under this Act to:
    - (a) a Deputy Commonwealth Ombudsman; or
    - (b) a member of staff mentioned in section 31 of the *Ombudsman Act 1976*.
- ### *IGIS*
- (3) The IGIS may, by writing, delegate any or all of his or her functions or powers under this Act to a member of staff mentioned in section 32 of the *Inspector-General of Intelligence and Security Act 1986*.

## 78 Liability for acts and omissions

- (1) A person who is:
  - (a) the principal officer of an agency or a delegate of the principal officer; or
  - (b) an authorised officer of an agency; or
  - (c) a supervisor of a person who makes a disclosure;
 is not liable to any criminal or civil proceedings, or any disciplinary action (including any action that involves imposing any detriment), for or in relation to an act or matter done, or omitted to be done, in good faith:
  - (d) in the performance, or purported performance, of any function conferred on the person by this Act; or
  - (e) in the exercise, or purported exercise, of any power conferred on the person by this Act.
- (2) This section does not apply to a breach of a designated publication restriction.  
 Note: For **designated publication restriction**, see section 8.
- (3) This section does not affect any rights conferred by the *Administrative Decisions (Judicial*

any year.

## 31A Special report by Ombudsman

- (1) The power of the Ombudsman to make a special report under section 31 (Special report to Parliament) of the *Ombudsman Act 1974* extends to the making of a special report on any matter arising in connection with the discharge of the Ombudsman's functions under or in connection with the operation of this Act, including systemic or other problems identified by the Ombudsman in connection with the operation of this Act.
- (2) A special report can include proposals for legislative change.
- (3) The Minister must table in each House of Parliament a response to any special report of the Ombudsman made pursuant to this section. The Minister's response to a special report must address each proposal for legislative change included in the report.  
**Note.** The requirements of the *Ombudsman Act 1974* apply in respect of a special report under section 31 of that Act on matters arising under this Act.

[No comparable provisions]

[No comparable provisions]

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<p><i>Review) Act 1977</i> to apply to a court, or any other rights to seek a review by a court or tribunal, in relation to:</p> <ul style="list-style-type: none"> <li>(a) a decision; or</li> <li>(b) conduct engaged in for the purpose of making a decision; or</li> <li>(c) a failure to make a decision.</li> </ul> <p>(4) An expression used in subsection (3) has the same meaning as in section 10 of the <i>Administrative Decisions (Judicial Review) Act 1977</i>.</p> <p><b>79 Concurrent operation of State and Territory laws</b> This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.</p> <p><b>80 Law relating to legal professional privilege not affected</b> This Act does not affect the law relating to legal professional privilege.</p> <p><b>82 Other investigative powers etc. not affected</b></p> <ul style="list-style-type: none"> <li>(1) This Act does not, by implication, limit the investigative powers conferred on an agency or a public official by a law of the Commonwealth other than this Act.</li> <li>(2) This Act does not detract from any obligations imposed on an agency or a public official by a law of the Commonwealth other than this Act.</li> </ul> <p><b>82A Review of operation of Act</b></p> <ul style="list-style-type: none"> <li>(1) The Minister must cause a review of the operation of this Act to be undertaken.</li> <li>(2) The review must: <ul style="list-style-type: none"> <li>(a) start 2 years after the commencement of this section; and</li> <li>(b) be completed within 6 months.</li> </ul> </li> <li>(3) The Minister must cause a written report about the review to be prepared.</li> <li>(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.</li> </ul> <p><b>83 The PID rules</b> The Minister may, by legislative instrument, make rules prescribing matters:</p> <ul style="list-style-type: none"> <li>(a) required or permitted by this Act to be prescribed; or</li> </ul>	<p><b>24 Other protection preserved</b> This Act does not limit the protection given by any other Act or law to a person who makes disclosures of any kind. [No comparable provisions]</p> <p><b>5 Relationship of this Act and other Acts</b></p> <ul style="list-style-type: none"> <li>(1) This Act prevails, to the extent of any inconsistency, over the provisions of any investigation Act.</li> <li>(2) However, nothing in this Act otherwise limits or affects the operation of any Act or the exercise of the functions conferred or imposed on an investigating authority or any other person or body under it.</li> <li>(3) Nothing in this Act (except section 13 (2), (4) and (4B)) authorises an investigating authority to investigate any complaint that it is not authorised to investigate under the relevant investigation Act.</li> </ul> <p><b>32 Review of Act</b></p> <ul style="list-style-type: none"> <li>(1) A joint committee of members of Parliament is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.</li> <li>(2) Without limiting subsection (1), the review is to consider: <ul style="list-style-type: none"> <li>(a) the effectiveness of the amendments made by the <i>Protected Disclosures Amendment (Public Interest Disclosures) Act 2010</i>, in particular the amendments providing for the role of the Steering Committee and the Ombudsman, and</li> <li>(b) whether the structures in place to support the operation of the public interest disclosures scheme remain appropriate, and</li> <li>(c) the need for further review of the Act after the review under this section.</li> </ul> </li> <li>(3) The joint committee is to consult on the review with each of the members of the Steering Committee and the members of the Steering Committee may assist the joint committee on the review and provide advice in connection with the review.</li> <li>(4) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the <i>Protected Disclosures Amendment (Public Interest Disclosures) Act 2010</i>.</li> <li>(5) The joint committee is to report on the outcome of the review to both Houses of Parliament as soon as practicable after the completion of the review.</li> <li>(6) The Minister administering this Act is to provide a response to the outcome of the report to both Houses of Parliament within 6 months of the report being tabled.</li> </ul> <p><b>30 Regulations</b></p> <ul style="list-style-type: none"> <li>(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be</li> </ul>

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

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prescribed for carrying out or giving effect to this Act.

(2) The Minister must not recommend the making of a regulation under this Act unless the Minister certifies that the Minister has consulted with the Steering Committee concerning the making of the regulation.