

Application of reforms to the PID Act

How the reforms apply, including reforms that have specific application arrangements.

GENERAL RULE FOR THE APPLICATION OF THE REFORMS

Generally, the reforms to the PID Act will apply to **disclosures made on or after 1 July 2023**, and to **conduct that occurs before, on or after 1 July 2023**.

Example: On 24 August 2023, a public official disclosed to an authorised officer that they know that a colleague fraudulently collected allowances from the department in December 2021.

Provided the disclosure meets the other requirements for an internal disclosure, the reforms would apply to this disclosure, even though the disclosable conduct occurred before 1 July 2023.

HOW DOES THE REPEAL OF THE SECRECY OFFENCE APPLY?

The reforms repeal the general secrecy offence in the PID Act. The offence **does not apply** to disclosures **made on or after 1 July 2023**, regardless of whether the conduct disclosed occurred before, on or after 1 July 2023.

Agencies must handle disclosures made **before 1 July 2023 in accordance with** the secrecy offence.

HOW DO THE EXPANDED REPRISAL PROTECTIONS APPLY?

The reforms strengthen the reprisal protections for disclosers and witnesses by expanding the scope of conduct that constitutes reprisal, including to:

- » protect public officials from **reprisal** that is taken because a person believed or suspected that they have made, may have made, propose to make or **could make** (new) a public interest disclosure
- » expand the types of harm (**detriment**) that constitute reprisal to include **harassment or intimidation, harm or injury to a person, and any damage to a person** (including their property, reputation or business or financial position), in addition to the existing types of harm, and
- » expand the definition of reprisal to include direct **and indirect** (new) threats to cause detriment.

The changes to whether **conduct constitutes a reprisal will only apply** in relation to conduct engaged in **on or after 1 July 2023**. However, the reprisal can be in relation to a **disclosure** (the reason, or part of the reason, for the reprisal conduct) that is made, or believed or suspected to have been made, **before, on or after 1 July 2023**.

This means the expanded protections will apply to disclosures already on foot before 1 July 2023, provided the reprisal conduct occurred on or after this time.

Where reprisal conduct occurred before 1 July 2023, the expanded scope of reprisal **will not apply**. Rather, the definition of reprisal and the reprisal protections provided by the PID Act as at 30 June 2023 will apply. This will be the case even where an authorised officer or principal officer only becomes aware of the reprisal conduct after 1 July 2023.

HOW DO THE REFORMS IMPACT EXISTING DELEGATIONS BY A PRINCIPAL OFFICER OF AN AGENCY?

Delegations made under the PID Act prior to commencement of the reforms on 1 July 2023 **will continue to be in force** on and after this time, as if they had been made under new section 77 of the PID Act.

However, as of 1 July 2023, all public officials subject to a delegation must comply with any directions of the principal officer who delegated the function or power. This is the case both where a delegation was made prior to 1 July 2023, but continues to be in force on and after this time, *and* where a delegation is made on or after 1 July 2023.

HOW DO THE MACHINERY OF GOVERNMENT PROVISIONS APPLY?

A machinery of government (MoG) change can involve the movement of functions, resources and staff from one Commonwealth agency to another, which may affect which agency an internal disclosure will 'relate to' under the PID Act.

The reforms to the PID Act clarify how a disclosure should be handled in light of such a change. In particular, they enable disclosures that are on foot to be transferred from an agency affected by a MoG change to the new agency, following a MoG change. The new agency would then be responsible for the handling of a disclosure in relation to the relevant conduct and would be subject to relevant obligations under the PID Act.

The reforms also provide that, following a MoG change, a principal officer of an affected agency may share information related to the disclosure with the new agency. Further information on the new MoG provisions is in Chapter 2 of the Ombudsman's agency guide to the PID Act.

These reforms will apply from 1 July in relation to a machinery of government change irrespective of whether the disclosure, or the conduct that is the subject of the disclosure, occurs before, on or after 1 July 2023.

WHEN DO THE OMBUDSMAN'S NEW REPORTING OBLIGATIONS COMMENCE?

The reforms require the Commonwealth Ombudsman to prepare six-monthly reports to Parliament covering the period 1 July to 31 December, in addition to annual reports. The first six-monthly report will cover the period from **1 July 2024 to 31 December 2024**.

A principal officer of an agency must provide the Ombudsman with information and assistance to prepare the six-monthly reports, just as they are currently required to do for annual reports.

From 1 January 2024, all the Ombudsman's reports to Parliament must include, for each agency, the number of disclosures allocated to the agency and the time taken to conduct disclosure investigations during the reporting period. This information is in addition to what is already required to be included in the Ombudsman's annual report.

The first affected report will be the annual report covering the period **1 July 2023 to 30 June 2024**. However, the first affected reporting period will be from **1 January 2024 to 30 June 2024** as the new reporting obligations will apply from 1 January 2024. This means there will be two sets of reporting obligations for the 1 July 2023- 30 June 2024 annual report:

- » the information required under the PID Act as of 30 June 2023 will apply to the period 1 July 2023 to 31 December 2023, and
- » the additional information required by the reforms must be included for the period 1 January 2024 to 30 June 2024.

For further information about see www.ombudsman.gov.au.

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