

New responsibilities and powers of Authorised Officers

New and amended responsibilities and powers from 1 July 2023

NEW RESPONSIBILITIES:

- » Take reasonable steps to protect public officials who belong to the agency from reprisal if the authorised officer (AO) suspects a relevant PID has been, may have been, is proposed to be, or could be made or given to the AO.
- » Refer suspected systemic or serious corrupt conduct to the NACC.
- » When explaining the requirements of the PID Act to disclosers, explain the circumstances in which a PID must be referred to another agency, person, or body, under another law (i.e. referral to the NACC if the disclosure could involve serious or systemic corrupt conduct).
- » Notify the Ombudsman of the reallocation of a disclosure.
- » Notify the Ombudsman when a disclosure is not allocated for investigation under the PID Act.
- » Notify the Ombudsman when a stop action direction from the NACC prevents allocation of all or part of a disclosure.
- » Determine whether personal work-related conduct included in a disclosure may be disclosable conduct (it will only be disclosable conduct if it concerns reprisal or has significant implications for an agency).

CLARIFICATION OF EXISTING POWERS

- » AOs can obtain information and make inquiries as they see fit, but only for the purposes of deciding to which agency (if any) a disclosure is to be allocated.
- » 'Allocation' is now defined in s 8 of the PID Act and includes a reallocation made in response to a recommendation by the Ombudsman or the IGIS or for any other reason.
- » 14-day timeframe for allocation starts again the day after the authorised officer becomes aware that a NACC stop action direction no longer applies.

NEW POWERS:

- » AOs may allocate for investigation under the PID Act to an agency within the same portfolio as the recipient agency if it would be better able to handle the disclosure.
- » Decide not to allocate a PID for investigation under the PID Act if satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power.

When is conduct more appropriately investigated under another law or power?

The purpose of the discretion is to ensure matters that are better investigated under another process can be easily referred. It is not to prevent matters from being investigated under the PID Act.

- » There must be another law or power under which the conduct could be investigated.
 - Another law or power is defined as a law of the Commonwealth (including procedures under such a law), or the executive power of the Commonwealth.
- » The alternative process must be more appropriate than investigation under the PID Act. An alternative investigation may be more appropriate because the alternative process:
 - is designed for investigating the specific kind of alleged conduct (such as Code of Conduct)
 - includes specific and required investigative powers
 - is more flexible or otherwise better suited to investigating and responding to the alleged conduct.

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

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