

Passed by both Houses



New South Wales

# Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2010*



New South Wales

## **Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010**

Act No , 2010

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An Act to amend the *Protected Disclosures Act 1994* to make further provision for protecting public officials who make disclosures to which the Act applies; and for other purposes.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Protected Disclosures Amendment (Public Interest Disclosures) Act 2010*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

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## **Schedule 1      Amendment of Protected Disclosures Act 1994 No 92**

**[1] Section 1 Name of Act**

Omit “*Protected Disclosures Act 1994*”.

Insert instead “*Public Interest Disclosures Act 1994*”.

**[2] Section 3 Object of Act**

Omit “corrupt conduct, maladministration and serious and substantial waste” from section 3 (1).

Insert instead “corrupt conduct, maladministration, serious and substantial waste and government information contravention”.

**[3] Section 4 Definitions**

Omit the definition of *disciplinary proceeding*.

**[4] Section 4, definition of “government information contravention”**

Insert in alphabetical order:

*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*.

**[5] Section 4, definition of “investigating authority”**

Omit paragraph (f). Insert instead:

(f) the local government investigating authority, or

**[6] Section 4, definition of “local government investigating authority”**

Insert in alphabetical order:

*local government investigating authority* means the Director-General under section 429A (Complaints about councils, councillors, delegates and staff) of the *Local Government Act 1993*.

**[7] Section 4, definition of “principal officer”**

Insert in alphabetical order:

*principal officer* of a public authority includes:

(a) for the Department of the Legislative Assembly—the Clerk of the Legislative Assembly and the Speaker of the Legislative Assembly, and

- (b) for the Department of the Legislative Council—the Clerk of the Parliaments and the President of the Legislative Council, and
- (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.

**[8] Section 4, definition of “public authority”**

Omit the definition. Insert instead:

*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 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.

**[9] Section 4, definition of “public official”**

Omit the definition. Insert instead:

*public official*—see section 4A.

**[10] Section 4, definition of “relevant investigation Act”**

Omit the definition. Insert instead:

*relevant investigation Act* means:

- (a) in relation to an investigating authority other than the local government investigating authority—the Act that appoints or constitutes the investigating authority, and
- (b) in relation to the local government investigating authority—the *Local Government Act 1993*.

**[11] Section 4, definition of “Steering Committee”**

Insert in alphabetical order:

*Steering Committee* means the Public Interest Disclosures Steering Committee established by section 6A.

**[12] Section 4 (2)**

Insert at the end of section 4:

- (2) Notes included in this Act do not form part of this Act.

**[13] Section 4A**

Insert after section 4:

**4A Public officials**

- (1) In this Act, *public official* means an individual who is an employee of or otherwise in the service of a public authority, and includes (without limitation) each of the following:
  - (a) a person employed under the *Public Sector Employment and Management Act 2002*,
  - (b) a member of Parliament, but not for the purposes of a disclosure made by the member,
  - (c) a person employed by either or both of the President of the Legislative Council or the Speaker of the Legislative Assembly,
  - (d) 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,
  - (e) an individual in the service of the Crown,
  - (f) an individual who is engaged by a public authority under a contract to provide services to or on behalf of the public authority (referred to in this section as an *independent contractor* to the public authority).
- (2) An individual who is a public official because he or she is an independent contractor to the public authority is taken to belong to the public authority for the purposes of this Act.

**[14] Sections 6A–6D**

Insert after section 6:

**6A Steering Committee**

- (1) There is established by this Act a Public Interest Disclosures Steering Committee consisting of the following members:
  - (a) the Ombudsman, who is to be the chairperson of the Steering Committee,

- (b) the Director-General of the Department of Premier and Cabinet,
  - (c) the Auditor-General,
  - (d) the Commissioner for the Independent Commission Against Corruption,
  - (e) the Commissioner for the PIC,
  - (f) the local government investigating authority,
  - (g) the Commissioner of Police,
  - (h) such other members as may be prescribed by the regulations.
- (2) The functions of the Steering Committee are:
- (a) to provide advice to the Minister on the operation of this Act and recommendations for reform, and
  - (b) to receive, consider and provide advice to the Minister on any reports provided by the Ombudsman in the exercise of functions under section 6B or as referred to in section 31A.
- (3) A member of the Steering Committee may appoint a nominee to act in the place of the member (either generally or for a particular purpose) and may revoke any such appointment. While acting in the place of a member, the member's nominee has all the functions of the member (including the functions of chairperson in the case of the Ombudsman's nominee) and is taken to be a member.
- (4) The quorum for a meeting of the Steering Committee is 3 members of the Committee of whom 2 must be the Ombudsman and the Director-General of the Department of Premier and Cabinet (or their nominees).
- (5) The Steering Committee is to determine its own procedures.
- (6) The Ombudsman (as chairperson of the Steering Committee) is to prepare an annual report of the Steering Committee's activities and any recommendations made to the Minister during the reporting period of 12 months ending on 30 June in each year.
- (7) The annual report is to be prepared and provided to the Minister as soon as practicable after the end of the reporting period and is to be tabled by the Minister in each House of Parliament as soon as practicable after the Minister receives it.

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**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.

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

- (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.
- (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.
- (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 *Ombudsman Act 1974* or can be provided as a separate report and provided to the Presiding Officer of each House of Parliament.



- (5) Section 31AA of the *Ombudsman Act 1974* 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.

**6C Provision of information to Ombudsman for audit purposes**

- (1) For the purposes of an audit under section 6B, the Ombudsman may require the principal officer of or who constitutes a public authority:
- (a) to give the Ombudsman a statement of information, or
  - (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
  - (c) to give the Ombudsman a copy of any such document.
- (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.
- (3) 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.
- (4) 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.
- (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.
- (6) Anything done by a person in compliance with a requirement of the Ombudsman under this section:
- (a) does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and
  - (b) does not give rise to any liability for defamation or other civil liability.

**6D Public interest disclosures policies and guidelines**

- (1) Each public authority must have a policy that provides for its procedures for receiving, assessing and dealing with protected disclosures.

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- (2) The Ombudsman may adopt guidelines for the procedures of public authorities for receiving, assessing and dealing with protected disclosures. The guidelines may include a model policy that provides for those procedures.
  - (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.

**[15] Section 8 Disclosures must be made by public officials**

Omit "corrupt conduct, maladministration or serious and substantial waste of public money" from section 8 (1) (c).

Insert instead "corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention".

**[16] Section 8 (1) (c1)**

Insert after section 8 (1) (c):

- (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

**[17] Section 9 Disclosures must be made voluntarily**

Omit "corrupt conduct, maladministration or serious and substantial waste of public money" from section 9 (3).

Insert instead "corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention".

**[18] Section 9A**

Insert after section 9:

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

- (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.
- (2) Such an assertion need not be express and can be inferred from the nature or content of the disclosure.

**[19] Sections 10, 11, 12, 12A, 12B, 12C, 13 and 14**

Omit “that shows or tends to show” wherever occurring.

Insert instead “that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show”.

**[20] Section 12B Disclosure concerning serious and substantial waste in local government**

Omit “Director-General of the Department of Local Government” from section 12B (1).

Insert instead “local government investigating authority”.

**[21] Section 12D Disclosure to Information Commissioner**

Omit section 12D (b). Insert instead:

- (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.

**[22] Section 14 Disclosures to public officials**

Omit “corrupt conduct, maladministration or serious and substantial waste of public money” from section 14 (1) and (2) wherever occurring.

Insert instead “corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention”.

**[23] Section 14 (2)**

Omit “corrupt conduct, maladministration or serious and substantial waste (whether”.

Insert instead “corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention (whether”.

**[24] Section 14 (2A)**

Insert after section 14 (2):

- (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:
  - (a) be made in accordance with any official procedure established for the reporting of allegations of corrupt

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conduct, maladministration or serious and substantial waste of public money by a member of Parliament, and

- (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.

**[25] Section 15**

Omit the section. Insert instead:

**15 Protection of misdirected disclosures**

- (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 to deal with the matter is a protected disclosure if:
- (a) 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
- (b) 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.
- (2) A *misdirected disclosure* is a disclosure that is not a protected disclosure because it was not made to the appropriate investigating authority or public authority (but that would have been a protected disclosure had it been made to the appropriate investigating authority or public authority).

**[26] Section 16 Disclosures made on frivolous or other grounds**

Omit the section.

**[27] Section 20 Protection against reprisals**

Omit the penalty from section 20 (1). Insert instead:

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

**[28] Section 20 (1B) and (1C)**

Insert after section 20 (1A):

- (1B) A public official who takes detrimental action against another person that is substantially in reprisal for the other person making a protected 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 taking of disciplinary action against the public official, including disciplinary action provided for:
- (a) by or under an Act that regulates the employment or service of the public official, or
  - (b) by or under a contract of employment or contract for services that governs the employment or engagement of the public official.
- (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 protected disclosure even if the other person did not in fact make a protected disclosure.

**[29] Section 20 (4)**

Insert after section 20 (3):

- (4) An investigating authority or public authority must refer any evidence of an offence under this section to the Director of Public Prosecutions or (if the alleged offence relates to conduct of the Director of Public Prosecutions) the Attorney General.

**[30] Sections 20A and 20B**

Insert after section 20:

**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 protected 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 protected disclosure even if the other person did not in fact make a protected disclosure.

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- (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 exercised:
  - (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
  - (b) whether or not the person has previously engaged in conduct of that kind, and
  - (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.
- (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.

**[31] Section 22 Confidentiality guidelines**

Omit section 22 (a). Insert instead:

- (a) the person consents in writing to the disclosure of that information, or it is generally known that the person has made the protected disclosure as a result of the person having voluntarily identified themselves (otherwise than by making the protected disclosure) as the person who made the protected disclosure, or

**[32] Section 22 (2)**

Insert at the end of section 22:

- (2) As part of its procedures for receiving, assessing and dealing with protected 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 protected disclosure made by the public official.

**Note.** These procedures are required to be the subject of a policy of the public authority under section 6D.

**[33] Section 25 Referral of disclosures by investigating authorities**

Omit “corrupt conduct, maladministration or serious and substantial waste” from section 25 (1).

Insert instead “corrupt conduct, maladministration, serious and substantial waste or government information contravention”.

**[34] Section 25 (8)**

Insert after section 25 (7):

- (8) A protected disclosure that is referred under this section remains a protected disclosure after it is referred.

**[35] Section 26 Referral of disclosures by public officials**

Omit “corrupt conduct, maladministration or serious and substantial waste” from section 26 (1).

Insert instead “corrupt conduct, maladministration, serious and substantial waste or government information contravention”.

**[36] Section 26 (3)**

Insert after section 26 (2):

- (3) A protected disclosure that is referred under this section remains a protected disclosure after it is referred.

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**[37] Section 26A**

Insert after section 26:

**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 money by officers of the separate office,
  - (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.
- (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.

**[38] Section 30 Regulations**

Insert at the end of the section:

- (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.

**[39] Sections 31–31B**

Insert after section 30:

**31 Reports to Parliament by public authorities**

- (1) Each public authority must, within 4 months after the end of each reporting year, prepare an annual report on the public authority's obligations under this Act for submission to the Minister



responsible for the public authority. A copy of the report is to be provided to the Ombudsman.

- (2) An annual report under this section must be tabled in each House of Parliament by the relevant Minister as soon as practicable after it is prepared unless it is included in an annual report prepared for the purposes of the *Annual Reports (Departments) Act 1985* or the *Annual Reports (Statutory Bodies) Act 1984*.
- (3) The regulations may make provision for or with respect to:
  - (a) the information to be included in annual reports, and
  - (b) the form in which annual reports are to be prepared.
- (4) In this section, a reference to the reporting year of a public authority is a reference to:
  - (a) the financial year of the public authority for the purposes of the *Annual Reports (Departments) Act 1985* or the *Annual Reports (Statutory Bodies) Act 1984*, or
  - (b) if the public authority does not have a financial year for the purposes of either of those Acts, the year ending 30 June.

### **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.

### **31B Review of Commonwealth legislation**

- (1) The Steering Committee is to 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.

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- (2) The review is to be conducted within 6 months after the enactment of the Commonwealth legislation (or within 6 months after the commencement of this section if the Commonwealth legislation is enacted before the commencement of this section).
  - (3) The Steering Committee is to provide the Minister with a report on the outcome of the review and any recommendations for reform of this Act arising from the review.
  - (4) A copy of the Steering Committee's report is to be tabled in each House of Parliament as soon as practicable after the report is provided to the Minister.

**[40] Section 32**

Omit the section. Insert instead:

**32 Review of Act**

- (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.
- (2) Without limiting subsection (1), the review is to consider:
  - (a) the effectiveness of the amendments made by the *Protected Disclosures Amendment (Public Interest Disclosures) Act 2010*, in particular the amendments providing for the role of the Steering Committee and the Ombudsman, and
  - (b) whether the structures in place to support the operation of the protected disclosures scheme remain appropriate, and
  - (c) the need for further review of the Act after the review under this section.
- (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.
- (4) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Protected Disclosures Amendment (Public Interest Disclosures) Act 2010*.
- (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.

- (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.

**[41] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Protected Disclosures Amendment (Public Interest Disclosures) Act 2010*

**[42] Schedule 2, Part 3**

Insert after Part 2:

**Part 3 Provisions consequent on enactment of Protected Disclosures Amendment (Public Interest Disclosures) Act 2010**

**7 Definition**

In this Part:

*amending Act* means the *Protected Disclosures Amendment (Public Interest Disclosures) Act 2010*.

**8 Amended definition of “public official”**

This Act extends to a disclosure of information made by a person who becomes a public official for the purposes of this Act because of the amendment by the amending Act of the definition of *public official* (being a disclosure made after the commencement of the amendment) even if the disclosure relates to conduct or activities engaged in, or matters arising, before the commencement of the amendment.

**9 Public interest disclosures policies**

A public authority is not required to have a policy under section 6D until 3 months after the commencement of that section.

**10 Frivolous or vexatious disclosures**

A disclosure that is not protected by this Act because of the operation of section 16 (Disclosures made on frivolous or other grounds) before the repeal of that section by the amending Act continues to be a disclosure that is not protected by this Act despite the repeal of that section.

**11 Protection against reprisals**

- (1) The amendment made by the amending Act to the maximum penalty for an offence under section 20 (1) does not apply to an offence committed before the commencement of the amendment.
- (2) Section 20 (1B) does not apply in respect of detrimental action taken before the commencement of that subsection but does apply to detrimental action taken after that commencement in respect of a protected disclosure made before that commencement.
- (3) Section 20 (4) does not apply to evidence of an offence committed before the commencement of that subsection.

**12 Compensation for reprisals**

Section 20A does not apply in respect of detrimental action taken against a person before the commencement of that section.

**13 Injunctions to prevent reprisals**

Section 20B extends to conduct that occurs before the commencement of that section but not so as to authorise the grant of an injunction requiring a person to do any act or thing to remedy a contravention occurring before the commencement of that section.

**14 Confidentiality**

The amendment of section 22 (a) by the amending Act extends to the voluntary and public identification of a person occurring before the commencement of that amendment and to a protected disclosure made before that commencement.

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

Section 26A extends to a disclosure made before the commencement of that section (when a public authority becomes a separate office within another public authority before that commencement) but only if the transition period referred to in that section ends after the commencement of the section.

**16 Local government investigating authority**

- (1) For the purposes of this Act, a reference in Division 1 of Part 5 of Chapter 13 of the *Local Government Act 1993* to the Director-General is to be construed as a reference to the Chief Executive, Local Government, in the Department of Premier and Cabinet, until an administrative changes order made after the

commencement of this clause under Part 4.2 of the *Public Sector Employment and Management Act 2002* provides otherwise.

- (2) A disclosure made by a public official on or after 1 July 2009 and before the commencement of this clause to the Deputy Director-General (Local Government) of the Department of Premier and Cabinet or the Chief Executive, Local Government, in the Department of Premier and Cabinet, that would be protected by this Act had the disclosure been made to the Director-General of the Department of Premier and Cabinet is taken to have been made to the Director-General of that Department.

**Note.** 1 July 2009 is the date of commencement of the *Public Sector Employment and Management (Departmental Amalgamations) Order 2009*. That order resulted in references to the Director-General of the Department of Local Government being construed as references to the Director-General of the Department of Premier and Cabinet.

**[43] Long title**

Omit “maladministration and waste”.

Insert instead “maladministration, waste and government information contravention”.

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## **Schedule 2    Amendment of other Acts**

### **2.1    Defamation Act 2005 No 77**

**[1]    Schedule 1 Additional publications to which absolute privilege applies**

Omit “*Protected Disclosures Act 1994*” from the heading to item 26.

Insert instead “*Public Interest Disclosures Act 1994*”.

**[2]    Schedule 1, item 26 (1)**

Omit “a public official or public authority referred to in section 8 (1) (b) or (c) of the *Protected Disclosures Act 1994* of a disclosure made to the public official or public authority”.

Insert instead “a person or public authority referred to in section 8 (1) (b), (c) or (c1) of the *Public Interest Disclosures Act 1994* of a disclosure made to the person or public authority”.

### **2.2    Education (School Administrative and Support Staff) Act 1987 No 240**

**Section 29 Meaning of “misconduct”**

Omit “*Protected Disclosures Act 1994*” from section 29 (1) (c).

Insert instead “*Public Interest Disclosures Act 1994*”.

### **2.3    Government Information (Public Access) Act 2009 No 52**

**Schedule 1 Information for which there is conclusive presumption of overriding public interest against disclosure**

Omit “*Protected Disclosures Act 1994*—section 22 (Confidentiality guideline)” from item 1.

Insert instead “*Public Interest Disclosures Act 1994*—section 22 (Confidentiality guidelines)”.

### **2.4    Health Records and Information Privacy Act 2002 No 71**

**Sections 5 (3) (h) and 68 (3)**

Omit “*Protected Disclosures Act 1994*” wherever occurring.

Insert instead “*Public Interest Disclosures Act 1994*”.

## **2.5 Independent Commission Against Corruption Act 1988 No 35**

### **Section 111D Complaints by public officials**

Omit “*Protected Disclosures Act 1994*” from section 111D (1).

Insert instead “*Public Interest Disclosures Act 1994*”.

## **2.6 Local Government Act 1993 No 30**

### **Section 429A Complaints about councils, councillors, delegates and staff**

Omit “*Protected Disclosures Act 1994*” from section 429A (1).

Insert instead “*Public Interest Disclosures Act 1994*”.

## **2.7 Major Events Act 2009 No 73**

### **Section 6 Designation of responsible authority**

Omit “*Protected Disclosures Act 1994*” from section 6 (b).

Insert instead “*Public Interest Disclosures Act 1994*”.

## **2.8 Ombudsman Act 1974 No 68**

### **Schedule 1 Excluded conduct of public authorities**

Omit “*Protected Disclosures Act 1994*” from item 12 (c).

Insert instead “*Public Interest Disclosures Act 1994*”.

## **2.9 Police Act 1990 No 47**

### **Section 206 Protection against reprisals**

Omit “*Protected Disclosures Act 1994*” from section 206 (2B) and (4) wherever occurring.

Insert instead “*Public Interest Disclosures Act 1994*”.

## **2.10 Police Integrity Commission Act 1996 No 28**

### **Section 135 Complaints by public officials**

Omit “*Protected Disclosures Act 1994*” from section 135 (1) and (2) wherever occurring.

Insert instead “*Public Interest Disclosures Act 1994*”.

## **2.11 Privacy and Personal Information Protection Act 1998 No 133**

### **Sections 4 (3) (e) and 62 (3)**

Omit “*Protected Disclosures Act 1994*” wherever occurring.

Insert instead “*Public Interest Disclosures Act 1994*”.

## **2.12 Public Finance and Audit Act 1983 No 152**

### **Section 52C Definitions**

Omit “*Protected Disclosures Act 1994*” from the definition of *public official*.

Insert instead “*Public Interest Disclosures Act 1994*”.

## **2.13 Public Sector Employment and Management Act 2002 No 43**

### **Section 43 Meaning of “misconduct”**

Omit “*Protected Disclosures Act 1994*” from section 43 (1) (c).

Insert instead “*Public Interest Disclosures Act 1994*”.

## **2.14 Road Transport (General) Act 2005 No 11**

### **Section 116 Dismissal or other victimisation of employee or contractor assisting with or reporting breaches**

Omit “*Protected Disclosures Act 1994*” from section 116 (11).

Insert instead “*Public Interest Disclosures Act 1994*”.

## **2.15 Teaching Service Act 1980 No 23**

### **Section 93C Meaning of “misconduct”**

Omit “*Protected Disclosures Act 1994*” from section 93C (1) (c).

Insert instead “*Public Interest Disclosures Act 1994*”.



**2.16 Technical and Further Education Commission Act 1990  
No 118**

**Section 22E Meaning of “misconduct”**

Omit “*Protected Disclosures Act 1994*” from section 22E (1) (c).

Insert instead “*Public Interest Disclosures Act 1994*”.