

Protected Disclosures Amendment Bill 1999

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Protected Disclosures Act 1994*, so as to enhance the rights of persons (“whistleblowers”) making protected disclosures under the Act, by:

- (a) reducing the difficulty of proving that an action taken against a whistleblower may properly be characterised as a prohibited reprisal, and
- (b) requiring an investigating authority, employer or official who discloses the identity of a whistleblower to bear the onus of proof in justifying the disclosure on public interest grounds, and
- (c) enabling a whistleblower against whom reprisals have been taken, or whose identity has been unlawfully disclosed, to take legal action against the person responsible and, in a case where a public official was responsible, against the public authority that is the official’s employer. The Bill proposes other amendments of a minor character. These are explained in detail later in this note.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 is a formal provision giving effect to the amendments to the *Protected Disclosures Act 1994* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Independent Commission Against Corruption Act 1988* set out in Schedule 2.

Schedule 1 Amendment of Protected Disclosures Act 1994

Object of Act

Schedule 1 [1] amends section 3 of the Act so as to state that the intent of the Act is to require promptness in the handling of matters that are the subject of a protected disclosure under the Act.

Protection against reprisals for making protected disclosure

Schedule 1 [2] amends section 20 of the Act, so as to provide that, for a court to find that an action taken to the detriment of an officer by another officer is a prohibited reprisal, it is only necessary for the court to be satisfied on the balance of probabilities that this is so. The penalty for such reprisals is also increased from 50 to 100 penalty units (current value \$11,000).

Confidentiality of disclosures

Schedule 1 [3] and **[4]** amend section 22 of the Act so as to provide that, if an officer to whom a protected disclosure is made discloses the identity of the whistleblower to some third party, the onus lies on that officer to justify the disclosure by reference to public interest.

Damages for failure to protect whistleblower or for breach of confidentiality

Schedule 1 [5] inserts a new section 22A which enables a whistleblower to take legal action if he or she has suffered loss or damage as a result of a reprisal or of the disclosure of his or her identity. The action lies against the public authority that employs a public official responsible for the breach, or against the Crown if the official is employed by the Crown, as well as against the person who actually took the prohibited action.

Notification of action taken in respect of complaint

Schedule 1 [6] amends section 27 of the Act so as to require a whistleblower to be notified without delay of the action intended to be taken in respect of the matter complained of. (The section currently requires such notice to be given within 6 months after the protected disclosure is made.)

Contracting out of the Act

Schedule 1 [7] inserts a new section 32A which prohibits contracting out of the Act. An agreement that limits the rights of a person to “blow the whistle” is, to the requisite extent, of no effect. This principle applies to an agreement to settle a litigious matter as well as to any other kind of agreement.

Schedule 2 Consequential amendment of Independent Commission Against Corruption Act 1988

Schedule 2 [1] and **[2]** amend section 8 of the Act so as to provide that a reprisal action against a whistleblower constitutes corrupt conduct, in the form of dishonesty or partiality in the exercise by an officer of his or her functions.