



New South Wales

# Public Interest Disclosures Amendment (Extension of Protections) Bill 2013

## Explanatory note

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

## Overview of Bill

The object of this Bill is to extend the protections from adverse consequences that the *Public Interest Disclosures Act 1994* provides for those persons who make disclosures in the public interest about public sector wrongdoing. This is achieved by:

- (a) extending those protections to all persons making disclosures (and removing the current limitation that only public officials can be protected), and
- (b) expanding the type of public sector wrongdoing about which a person can make a disclosure and be protected from adverse consequences, and extending the requirements to investigate and deal with disclosures about such wrongdoing, so as to include the following:
  - (i) scientific misconduct by public authorities or their officers,
  - (ii) acts or omissions of public authorities or their officers that create risks to the environment (including the carrying on of activities in an environmentally unsatisfactory manner),
  - (iii) acts or omissions of public authorities or their officers that create risks to public health or safety (or both), and
- (c) extending the circumstances in which a public interest disclosure made directly to a journalist or member of Parliament will be protected, so as to include circumstances when a person could not first report to any other investigating authority or body (as is currently required), and
- (d) further protecting those who make public interest disclosures against detrimental action being taken or threatened against them:

- (i) by making it an offence whenever detrimental action is taken or threatened against a person for reasons that include reprisal for the fact that the person made a disclosure (and not only when the detrimental action was taken substantially in reprisal for making of the disclosure, as at present), and
- (ii) similarly, by allowing civil remedies for compensation to be pursued for damages for any loss, damage or injury suffered as a result of detrimental action taken or threatened for reasons that include reprisal for the making of a disclosure (and not only when the detrimental action was taken substantially in reprisal for the detrimental action, as at present), and
- (iii) by allowing those civil remedies to be pursued in the Industrial Relations Commission.

## 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 3 months after the date of assent to the proposed Act, unless it is commenced sooner by proclamation.

## **Schedule 1      Amendment of Public Interest Disclosures Act 1994 No 92**

### **Extension of protections from adverse consequences to disclosures made by persons who are not public officials**

**Schedule 1 [1]** amends the long title of the Act to reflect its extension (by other amendments made by **Schedule 1**) so as to protect the disclosures of all persons, and not just public officials.

**Schedule 1 [18]** makes it clear that any person may make a disclosure that may be protected by the Act, whether or not the person is a public official. The amendment also provides that a disclosure may be protected by the Act even if it is made anonymously.

**Schedule 1 [11], [15]–[17], [19], [20], [22]–[24], [28]–[30] and [37]–[40]** make consequential amendments to reflect the extension of the Act to the disclosures of all persons.

### **Extension of possible subject matter of protected disclosures to include those about scientific misconduct or environmental, public health or public safety risks**

**Schedule 1 [2]** amends the long title of the Act to reflect the extension of the Act (by other amendments made by **Schedule 1 [4], [25] and [27]**) to disclosures that a public authority or any officer of a public authority:

- (a) is or has been involved in scientific misconduct, or
- (b) is or has been involved in conduct or inaction that results in a danger to the environment or results in, or increases, a risk of danger to the environment (including by carrying on an activity in an environmentally unsatisfactory manner), or
- (c) is or has been involved in conduct or inaction that results in a danger to public health or safety (or both) or results in, or increases, a risk of danger to public health or safety (or both).

**Schedule 1 [3]** amends the object of the Act to reflect that the Act is no longer limited to corruption, maladministration, waste and contraventions relating to access to information and disclosure of pecuniary interests, but extends to disclosures about scientific misconduct and environmental, public health and public safety risks.

**Schedule 1 [4]** provides that scientific misconduct is an aspect of corrupt conduct.

**Schedule 1 [6] and [10]** insert definitions relating to the extension of the Act to disclosures about scientific misconduct and environmental, public health or public safety risks.

**Schedule 1 [7]–[9]** update definitions as a consequence of the roles created for the Environment Protection Authority by the extension of the Act to environmental risks.

**Schedule 1 [12], [26] and [37]–[39]** are consequential on the extension of the Act to disclosures about environmental risks.

**Schedule 1 [13] and [14]** provide for the representation of the Environment Protection Authority on the Public Interest Disclosures Steering Committee as a consequence of the role created for the Environment Protection Authority by the extension of the Act to disclosures about environmental risks.

**Schedule 1 [25]** provides for disclosures to be protected if they are made to the Ombudsman and disclose that a public authority, or any officer of a public authority acting, or purporting to act, in his or her official capacity, is or has been involved in conduct or inaction that results in a danger to public health or safety (or both) or results in, or increases, a risk of danger to public health or safety (or both).

**Schedule 1 [27]** provides for disclosures to be protected if they are made to the Environment Protection Authority and disclose that a public authority, or any officer of a public authority acting, or purporting to act, in his or her official capacity, is or has been involved in conduct or inaction that results in a danger to the environment or results in, or increases, a risk of danger to the environment (including by carrying on an activity in an environmentally unsatisfactory manner).

**Schedule 2.8 and 2.11** amend the *Ombudsman Act 1974* and the *Protection of the Environment Operations Act 1997* to provide for the investigation of those complaints by the Ombudsman and Environment Protection Authority, respectively.

### **Extension of circumstances in which disclosures to members of Parliament or journalists will be protected**

**Schedule 1 [32]** extends the circumstances in which a person can make a protected disclosure to a member of Parliament or journalist. The amended provision will also provide protection where a disclosure is made directly to a member of Parliament or journalist in circumstances where there is significant risk of detrimental action to the person making the disclosure if a disclosure is made as elsewhere provided by the Act and where it would be unreasonable in all the circumstances for the person to make a disclosure to another person under the Act, which is currently a requirement if such a disclosure is to be protected.

**Schedule 1 [21]** makes a consequential amendment.

### **Extension of protections from detrimental action taken or threatened in reprisal for making a protected disclosure**

**Schedule 1 [33]** extends the existing offence for taking detrimental action against a person substantially in reprisal for the person making a public interest disclosure so that it also applies if reprisal for the disclosure was one of several reasons for taking detrimental action, that is, even if it was not the main reason. The amendment also extends the offence to include threatening detrimental action.

**Schedule 1 [34]** extends the existing provision about taking disciplinary action against a public official for taking detrimental action against a person substantially in reprisal for the person making a public interest disclosure so that it also applies if reprisal for the disclosure was one of the reasons for taking or threatening detrimental action in reprisal, that is, even if it was not the main reason. The amendment also extends the provision to include disciplinary action for threatening detrimental action.

**Schedule 1 [5]** moves the definition of *detrimental action*, so that it applies more broadly to the whole Act.

**Schedule 1 [31] and [36]** make amendments that are consequential on the fact that the prohibitions on taking or threatening detrimental action will apply even if the disclosure was not the main reason for detrimental action being taken or threatened.

### **Extension of right to compensation for loss, damage or injury arising from detrimental action taken or threatened in reprisal for making a protected disclosure**

**Schedule 1 [35]** allows civil remedies to be pursued in the Industrial Relations Commission rather than other civil courts for loss, damage or injury suffered as a result of detrimental action taken or threatened in reprisal, or partly in reprisal, for the making of a public interest disclosure (and not only when the disclosure was substantially in reprisal for the taking of the detrimental action in reprisal, as at present).

### **Savings and transitional provisions**

**Schedule 1 [41]** inserts savings and transitional provisions consequent on the enactment of the proposed Act.

## **Schedule 2      Amendment of other legislation**

### **Amendment of Defamation Act 2005 No 77**

**Schedule 2.1 [1]** is consequential on the amendment made by **Schedule 1 [18]**, extending protections to public interest disclosures made by all persons (not only public officials).

**Schedule 2.1 [2]** is consequential on the amendments made by **Schedule 1 [4]** and other provisions of **Schedule 1** that extend protections in relation to public interest disclosures to those about scientific misconduct (by extending the definition of *corrupt conduct*).

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

**Schedule 2.2** is consequential on the amendments made by **Schedule 1 [33] and [34]** that prohibit detrimental action even if it is not taken or threatened substantially in reprisal for making a public interest disclosure, but in circumstances where reprisal for making the disclosure is one of the reasons for taking or threatening the detrimental action.

### **Amendment of Government Sector Employment Act 2013 No 40**

**Schedule 2.3** is consequential on the amendments made by **Schedule 1 [33] and [34]** that prohibit detrimental action even if it is not taken or threatened substantially in reprisal for making a public interest disclosure, but in circumstances where reprisal for making the disclosure is one of the reasons for taking or threatening the detrimental action.

### **Amendment of Health Services Regulation 2013**

**Schedule 2.4** is consequential on the amendments made by **Schedule 1 [33] and [34]** that prohibit detrimental action even if it is not taken or threatened substantially in reprisal for making a public interest disclosure, but in circumstances where reprisal for making the disclosure is one of the reasons for taking or threatening the detrimental action.

### **Amendment of Independent Commission Against Corruption Act 1988 No 35**

**Schedule 2.5 [1]** makes it clear that corrupt conduct includes scientific misconduct.

**Schedule 2.5 [2]** is consequential on the amendments made by **Schedule 1 [18] and [23]** that any person, and not only a public official, can be protected in relation to a public interest disclosure about the conduct of the Independent Commission Against Corruption, an officer or former officer of the Commission or an officer of the Inspector of the Independent Commission Against Corruption.

### **Amendment of Industrial Relations Act 1996 No 17**

**Schedule 2.6 [1]** is consequential on the amendments made by **Schedule 1 [33] and [34]** that prohibit detrimental action even if it is not taken or threatened substantially in reprisal for making a public interest disclosure, but in circumstances where reprisal for making the disclosure is one of the reasons for taking or threatening the detrimental action.

**Schedule 2.6 [2]** is consequential on the amendments made by **Schedule 1 [33] and [34]** and confers jurisdiction on the Industrial Relations Commission in Court Session to hear proceedings under section 20A of the *Public Interest Disclosures Act 1994* (as proposed to be amended by **Schedule 1 [35]**).

### **Amendment of Local Government Act 1993 No 30**

**Schedule 2.7** is consequential on the amendments made by **Schedule 1 [18] and [23]** that any person, and not only a public official, can be protected in relation to a public interest disclosure about certain local government matters.

### **Amendment of Ombudsman Act 1974 No 68**

**Schedule 2.8** provides for the making of complaints about risks to public health and safety to the Ombudsman and for the investigation of those complaints.

### **Amendment of Police Act 1990 No 47**

**Schedule 2.9** is consequential on the amendments made by **Schedule 1 [33] and [34]** that prohibit detrimental action even if it is not taken or threatened substantially in reprisal for making a public interest disclosure, but in circumstances where reprisal for making the disclosure is one of the reasons for taking or threatening the detrimental action.

### **Amendment of Police Integrity Commission Act 1996 No 28**

**Schedule 2.10** is consequential on the amendments made by **Schedule 1 [33] and [34]** that prohibit detrimental action even if it is not taken substantially in reprisal for making a public interest disclosure, but in circumstances where reprisal for making the disclosure is one of the reasons for taking or threatening the detrimental action.

### **Amendment of Protection of the Environment Operations Act 1997 No 156**

**Schedule 2.11** provides for the making of complaints about risks to the environment to the Environment Protection Authority and for the investigation of those complaints.

### **Amendment of Public Finance and Audit Act 1983 No 152**

**Schedule 2.12** is consequential on the amendment made by **Schedule 1 [18] and [23]** that any person, and not only a public official, can be protected in relation to a public interest disclosure concerning serious and substantial waste of public money.

### **Amendment of Public Sector Employment and Management Act 2002 No 43**

**Schedule 2.13** is consequential on the amendments made by **Schedule 1 [33] and [34]** that prohibit detrimental action even if it is not taken or threatened substantially in reprisal for making a public interest disclosure, but in circumstances where reprisal for making the disclosure is one of the reasons for taking or threatening the detrimental action.

### **Amendment of Teaching Service Act 1980 No 23**

**Schedule 2.14** is consequential on the amendments made by **Schedule 1 [33] and [34]** that prohibit detrimental action even if it is not taken or threatened substantially in reprisal for making a public interest disclosure, but in circumstances where reprisal for making the disclosure is one of the reasons for taking or threatening the detrimental action.



New South Wales

# Public Interest Disclosures Amendment (Extension of Protections) Bill 2013

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New South Wales

# Public Interest Disclosures Amendment (Extension of Protections) Bill 2013

No. , 2013

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## A Bill for

An Act to amend the *Public Interest Disclosures Act 1994* to extend its protection to all persons who make disclosures in the public interest and to a broader category of disclosures about public sector wrongdoing; and for other purposes.

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

1

**1 Name of Act**

2

This Act is the *Public Interest Disclosures Amendment (Extension of Protections) Act 2013*.

3

4

**2 Commencement**

5

This Act commences on the date that is 3 months after the date of assent to this Act, unless commenced sooner by proclamation.

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7



<b>Schedule 1</b>	<b>Amendment of Public Interest Disclosures Act</b>	1
	<b>1994 No 92</b>	2
<b>[1] Long title</b>		3
	Omit “public officials”. Insert instead “persons”.	4
<b>[2] Long title</b>		5
	Insert “scientific misconduct, risks to the environment, public health or public safety,” after “waste,”.	6
		7
<b>[3] Section 3 Object of Act</b>		8
	Omit section 3 (1). Insert instead:	9
	(1) The object of this Act is to encourage and facilitate the disclosure, in the public interest, of the following serious wrongdoing or misconduct in the public sector:	10
		11
		12
	(a) corrupt conduct (including scientific misconduct),	13
	(b) maladministration,	14
	(c) serious and substantial waste,	15
	(d) failure to comply with obligations relating to public access to government information,	16
		17
	(e) failure to comply with obligations relating to the disclosure of the pecuniary interest of those in local government,	18
		19
	(f) conduct or inaction that:	20
	(i) results in a danger to the environment, or	21
	(ii) results in, or increases, a risk of danger to the environment,	22
	(g) conduct or inaction that:	23
	(i) results in a danger to public health or safety (or both), or	24
	(ii) results in, or increases, a risk of danger to public health or safety (or both).	25
		26
	(1A) This Act’s object is achieved by:	27
	(a) establishing procedures for making disclosures about such matters, and	28
	(b) providing for those disclosures to be properly investigated and dealt with, and	29
		30
	(c) providing persons who make those disclosures with protection from adverse consequences that might otherwise be inflicted on them because of those disclosures, and	31
		32
		33
	(d) creating an entitlement to compensation if any detrimental action is taken or threatened against a person because of the making of a disclosure.	34
		35
		36
<b>[4] Section 4 Definitions</b>		37
	Insert “(and includes scientific misconduct)” after “1988” in the definition of <i>corrupt conduct</i> in section 4 (1).	38
		39

<b>[5] Section 4 (1), definition of “detrimental action”</b>	1
Omit the definition. Insert instead:	2
<b>detrimental action</b> means action causing, comprising or involving any of the following:	3
	4
(a) injury, damage or loss,	5
(b) intimidation or harassment,	6
(c) discrimination, disadvantage or adverse treatment in relation to employment,	7
	8
(d) dismissal from, or prejudice in, employment,	9
(e) disciplinary proceedings.	10
<b>[6] Section 4 (1)</b>	11
Insert in alphabetical order:	12
<b>environment</b> has the same meaning as it has in the <i>Protection of the Environment Operations Act 1997</i> .	13
<b>environmentally unsatisfactory manner</b> —see subsection (3).	14
<b>EPA</b> means the Environment Protection Authority constituted by the <i>Protection of the Environment Administration Act 1991</i> .	15
<b>scientific misconduct</b> means any of the following:	16
	17
(a) fabrication, falsification, plagiarism or deception in proposing, carrying out or reporting the results of scientific research,	18
	19
(b) failure of a researcher to declare or manage a serious conflict of interest,	20
(c) misconduct relating to scientific analysis, scientific evaluation or the giving of scientific advice,	21
	22
(d) avoidable failure to follow research proposals as approved by a research ethics committee where this failure may result in unreasonable risk or harm to humans, animals or the environment,	23
	24
(e) the wilful concealment, or facilitation, of conduct referred to in paragraphs (a)–(d).	25
	26
<b>serious public sector wrongdoing</b> means any of the following:	27
	28
(a) corrupt conduct (including scientific misconduct by a public authority or by a public official acting in, or purporting to act in, his or her official capacity),	29
	30
(b) maladministration,	31
	32
(c) serious and substantial waste of government money,	33
(d) a government information contravention,	34
	35
(e) conduct or inaction by a public authority, or by an officer of a public authority acting, or purporting to act, in his or her official capacity, that:	36
	37
(i) results in a danger to the environment, or	38
(ii) results in, or increases, a risk of danger to the environment,	39
including the carrying on of an activity in an environmentally	40
unsatisfactory manner by a public authority or by an officer of a public	41
authority acting, or purporting to act, in his or her official capacity,	42
	43
(f) conduct or inaction by a public authority, or by an officer of a public authority acting, or purporting to act, in his or her official capacity, that:	44
	45
(i) results in a danger to public health or safety (or both), or	

	(ii) results in, or increases, a risk of danger to public health or safety (or both).	1 2
<b>[7]</b>	<b>Section 4 (1), definition of “investigating authority”</b>	3
	Insert at the end of paragraph (i):	4
	, or	5
	(j) the EPA.	6
<b>[8]</b>	<b>Section 4 (1), definition of “investigation Act”</b>	7
	Insert at the end of paragraph (g):	8
	, or	9
	(h) the <i>Protection of the Environment Operations Act 1997</i> .	10
<b>[9]</b>	<b>Section 4 (1), definition of “relevant investigation Act”</b>	11
	Omit the definition. Insert instead:	12
	<b><i>relevant investigation Act</i></b> means:	13
	(a) in relation to the Commission or the ICAC Inspector—the <i>Independent Commission Against Corruption Act 1988</i> , or	14 15
	(b) in relation to the Ombudsman—the <i>Ombudsman Act 1974</i> , or	16
	(c) in relation to the Auditor-General—the <i>Public Finance and Audit Act 1983</i> , or	17 18
	(d) in relation to the PIC or the PIC Inspector—the <i>Police Integrity Commission Act 1996</i> , or	19 20
	(e) in relation to the local government investigating authority—the <i>Local Government Act 1993</i> , or	21 22
	(f) in relation to the Information Commissioner—the <i>Government Information (Information Commissioner) Act 2009</i> , or	23 24
	(g) in relation to the CC Inspector—the <i>Crime Commission Act 2012</i> , or	25
	(h) in relation to the EPA—the <i>Protection of the Environment Operations Act 1997</i> .	26 27
<b>[10]</b>	<b>Section 4 (3)</b>	28
	Insert after section 4 (2):	29
	(3) For the purposes of this Act, an activity is carried on in an <b><i>environmentally unsatisfactory manner</i></b> if:	30 31
	(a) it is carried on in contravention of, or in a manner that is likely to lead to a contravention of, the <i>Protection of the Environment Operations Act 1997</i> , the regulations under that Act or a condition attached to an environment protection licence (including a condition of a surrender of a licence) issued, or an exemption given, under that Act or those regulations, or	32 33 34 35 36 37
	(b) it causes, or is likely to cause, a pollution incident (within the meaning of the <i>Protection of the Environment Operations Act 1997</i> ), or	38 39
	(c) it is not carried on by such practicable means as may be necessary to prevent, control or minimise pollution (within the meaning of the <i>Protection of the Environment Operations Act 1997</i> ), the emission of any noise or the generation of waste, or	40 41 42 43
	(d) it is not carried on in accordance with good environmental practice.	44

<b>[11] Section 4A Public officials</b>	1
Omit “but not for the purposes of a disclosure made by the member,” from section 4A (1) (a) (ii).	2 3
<b>[12] Section 5 Relationship between this Act and other Acts</b>	4
Omit “section 13 (2) and (4)” from section 5 (3).	5
Insert instead “section 11 (1) (b) (ii) or (iii), 12F or 13 (2) and (4)”.	6
<b>[13] Section 6A Steering Committee</b>	7
Insert after section 6A (1) (g2):	8
(g3) the Chairperson of the EPA,	9
<b>[14] Section 6A (4)</b>	10
Omit “4 members”. Insert instead “5 members”.	11
<b>[15] Section 6B Oversight of Act by Ombudsman</b>	12
Omit “and public officials” from section 6B (1) (b).	13
Insert “, public officials and other persons”.	14
<b>[16] Section 6B (1) (d)</b>	15
Omit “public officials”. Insert instead “persons”.	16
<b>[17] Section 6B (1) (d1)</b>	17
Insert after section 6B (1) (d):	18
(d1) to ensure that the public is made aware of the protections under this Act for a person who makes a public interest disclosure,	19 20
<b>[18] Section 7A</b>	21
Insert after section 7:	22
<b>7A No restriction on who may make a protected disclosure</b>	23
(1) Any person may make a disclosure that may be protected by this Act, whether or not the person is a public official.	24 25
(2) A person may make a disclosure protected by this Act in any way, including anonymously.	26 27
<b>[19] Sections 8 (1), 10, 11 (1), 12D and 15 (1)</b>	28
Omit “by a public official” wherever occurring. Insert instead “by a person”.	29
<b>[20] Section 8 Disclosures that are protected by this Act</b>	30
Omit section 8 (1) (c). Insert instead:	31
(b1) to an officer of the public authority or investigating authority to which the disclosure relates, in accordance with any procedure established by the authority for the reporting of allegations of serious public sector wrongdoing by that authority or any of its officers, or	32 33 34 35
(c) if the person making a disclosure is a public official, to another officer of the public authority or investigating authority to which the public official belongs, in accordance with any procedure established by the	36 37 38

	authority for the reporting of allegations of serious public sector wrongdoing by that authority or any of its officers, or	1 2
<b>[21]</b>	<b>Section 8 (1) (d)</b>	3
	Insert “(but only in the manner specified in section 19)” after “journalist”.	4
<b>[22]</b>	<b>Section 8 (3)</b>	5
	Omit the subsection.	6
<b>[23]</b>	<b>Sections 9A (1), 12 (1), 12A, 12B (1), 12C (1), (2) and (3), 12E (1), (2) and (3), 13 (1) and (3) and 14 (2A)</b>	7 8
	Omit “public official” wherever occurring. Insert instead “person”.	9
<b>[24]</b>	<b>Sections 10 (b) and 12D</b>	10
	Omit “another” wherever occurring.	11
<b>[25]</b>	<b>Section 11 Disclosure to Ombudsman concerning maladministration and risks to public health or safety (or both)</b>	12 13
	Omit section 11 (1) (b). Insert instead:	14
	(b) be a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show that:	15 16
	(i) in the exercise of a function relating to a matter of administration conferred or imposed on a public authority or 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, or	17 18 19 20 21
	(ii) a public authority or public official acting, or purporting to act, in his or her official capacity has acted, or is omitting to act, in a manner that results in a danger to public health or safety, or to both public health and safety, or	22 23 24 25
	(iii) a public authority or public official acting, or purporting to act, in his or her official capacity has acted, or is omitting to act, in a manner that results in, or increases, a risk of danger to public health or safety, or to both public health and safety.	26 27 28 29
<b>[26]</b>	<b>Section 12B Disclosure concerning local government</b>	30
	Insert “, conduct or inaction that results in a danger to the environment, public health or public safety (or both) or that results in, or increases, a risk of danger to the environment, public health or public safety (or both)” after “government information contravention” in section 12B (1) (b).	31 32 33 34
<b>[27]</b>	<b>Section 12F</b>	35
	Insert after section 12E:	36
<b>12F</b>	<b>Disclosure to EPA concerning risks to environment</b>	37
	To be protected by this Act, a disclosure to the EPA must:	38
	(a) be made in accordance with the <i>Protection of the Environment Operations Act 1997</i> , and	39 40
	(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 public official acting, or purporting to act, in his or her official capacity:	41 42 43 44

	(i) is or has been carrying on an activity in an environmentally unsatisfactory manner, or	1 2
	(ii) has acted, or is omitting to act, in a manner that results in a danger to the environment, or	3 4
	(iii) has acted, or is omitting to act, in a manner that results in, or increases, a risk of danger to the environment.	5 6
<b>[28]</b>	<b>Section 14 Disclosures to public officials</b>	7
	Omit section 14 (1) and (2). Insert instead:	8
	(1) To be protected by this Act:	9
	(a) a disclosure by a person to the principal officer of, or a person 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 any serious public sector wrongdoing by the authority or any of its officers or by any other public authority or any of its officers, and	10 11 12 13 14 15
	(b) a disclosure by a person to an officer of the public authority to which the disclosure relates, in accordance with any procedure established by the authority for the reporting of allegations of serious public sector wrongdoing 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 any serious public sector wrongdoing (whether by that authority or any of its officers or by another public authority or any of its officers), and	16 17 18 19 20 21 22 23
	(c) a disclosure by a public official to another officer of the public authority to which the public official belongs, in accordance with any procedure established by the authority for the reporting of allegations of serious public sector wrongdoing 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 any serious public sector wrongdoing (whether by that authority or any of its officers or by another public authority or any of its officers).	24 25 26 27 28 29 30 31
<b>[29]</b>	<b>Section 15 Protection of misdirected disclosures</b>	32
	Omit “the public official” from section 15 (1). Insert instead “the person”.	33
<b>[30]</b>	<b>Section 17 Disclosures concerning merits of government policy</b>	34
	Omit “made by a public official” from section 17 (1).	35
<b>[31]</b>	<b>Section 18 Disclosures motivated by object of avoiding disciplinary action</b>	36
	Omit “in reprisal”. Insert instead “for reasons that include reprisal”.	37
<b>[32]</b>	<b>Section 19</b>	38
	Omit the section. Insert instead:	39
	<b>19 Disclosure to a member of Parliament or journalist</b>	40
	(1) A disclosure to a member of Parliament, or to a journalist, is protected by this Act if:	41 42
	(a) official channels have been exhausted by the person making the disclosure, or	43 44

(b)	there are exceptional circumstances justifying the person making the disclosure directly to the member of Parliament or journalist.	1 2
(2)	For the purposes of this section, official channels are taken to have been exhausted if:	3 4
(a)	the person making the disclosure has already made substantially the same disclosure to an investigating authority, public authority or officer of a public authority in accordance with another provision of this Part, and	5 6 7 8
(b)	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:	9 10 11
(i)	has decided not to investigate the matter, or	12
(ii)	has decided to investigate the matter but not completed the investigation within 6 months of the original disclosure being made, or	13 14 15
(iii)	has investigated the matter but not recommended the taking of any action in respect of the matter, or	16 17
(iv)	has refused or failed to investigate, or	18
(v)	has failed to notify the person making the disclosure, within 6 months of the disclosure being made, as to whether or not the matter is to be investigated.	19 20 21
(3)	For the purposes of this section, there are exceptional circumstances justifying a person making the disclosure directly to a member of Parliament or journalist if:	22 23 24
(a)	there is a significant risk of detrimental action to the person or someone else if a disclosure is made to an investigating authority, public authority or officer of a public authority in accordance with another provision of this Part, and	25 26 27 28
(b)	it would be unreasonable in all the circumstances for the person to make a disclosure to an investigating authority, public authority or officer of a public authority in accordance with another provision of this Part.	29 30 31
(4)	In making a disclosure under this section, the person must disclose sufficient information to show that the conduct or inaction disclosed is serious public sector wrongdoing or a local government pecuniary interest contravention, but not more than is reasonably necessary to show that the conduct is such wrongdoing or such a contravention.	32 33 34 35 36
(5)	A disclosure under this section will be protected by this Act only if:	37
(a)	the person making the disclosure has reasonable grounds for believing that the disclosure is substantially true, and	38 39
(b)	the disclosure is substantially true.	40
<b>[33]</b>	<b>Section 20 Offence of taking or threatening detrimental action against a person in reprisal for a public interest disclosure</b>	41 42
	Omit section 20 (1), (1A), (1B), (1C) and (2). Insert instead:	43
(1)	A person must not take, or threaten to take, detrimental action against another person:	44 45
(a)	in reprisal for the other person making, or intending to make, a public interest disclosure, or	46 47

(b)	for reasons that include reprisal for the other person making, or intending to make, a public interest disclosure.	1 2
	Maximum penalty: 100 penalty units or imprisonment for 3 years, or both.	3
(1A)	In determining whether a reason that detrimental action was taken or threatened against a person was in reprisal for that person making a public interest disclosure, it is sufficient if such reprisal was one of the reasons for taking or threatening detrimental action and it does not matter that there were other reasons for taking detrimental action.	4 5 6 7 8
(1B)	In any proceedings for an offence against this section, it lies on the defendant to prove that the detrimental action shown to be taken or threatened against a person was not taken or threatened in reprisal for the other person making, or intending to make, a public interest disclosure or for reasons that included reprisal for the other person making, or intending to make, a public interest disclosure.	9 10 11 12 13 14
(2)	This section extends to a case where the person who takes or threatens detrimental action does so because the person believes or suspects that the other person made or may have made or may make a public interest disclosure even if the other person did not in fact make a public interest disclosure.	15 16 17 18
<b>[34]</b>	<b>Section 20AA</b>	19
	Insert after section 20:	20
<b>20AA</b>	<b>Disciplinary action against public official who takes or threatens detrimental action in reprisal for a public interest disclosure</b>	21 22
(1)	A public official who takes or threatens to take detrimental action against another person in circumstances where the taking or threatening of the detrimental action is:	23 24 25
(a)	in reprisal for the other person making, or intending to make, a public interest disclosure, or	26 27
(b)	for reasons that include reprisal for the other person making, or intending to make, a public interest disclosure,	28 29
	is guilty of engaging in conduct that constitutes wrongdoing in the performance of his or her duties as a public official and that justifies the taking of disciplinary action against the public official.	30 31 32
(2)	The disciplinary action that may be taken against the public official includes disciplinary action provided for:	33 34
(a)	by or under an Act that regulates the employment or service of the public official, or	35 36
(b)	by or under a contract of employment or contract for services that governs the employment or engagement of the public official.	37 38
(3)	In determining whether a reason that detrimental action was taken or threatened against a person was reprisal for that person making a public interest disclosure, it is sufficient if such reprisal was one of the reasons for taking or threatening detrimental action and it does not matter that there were other reasons for taking detrimental action.	39 40 41 42 43
(4)	This section extends to a case where the person who takes or threatens detrimental action does so because the person believes or suspects that the other person made or may have made or may make a public interest disclosure even if the other person did not in fact make a public interest disclosure.	44 45 46 47



<b>[35] Section 20A Person can be compensated for loss, damage or injury caused by detrimental action taken or threatened in reprisal for disclosure</b>	1 2
Omit section 20A (1)–(3). Insert instead:	3
(1) A person who takes or threatens to take detrimental action against another person in circumstances where the taking or threatening of the detrimental action was:	4 5 6
(a) in reprisal for the other person making, or intending to make, a public interest disclosure, or	7 8
(b) for reasons that include reprisal for the other person making, or intending to make, a public interest disclosure,	9 10
is liable in damages for any loss, damage or injury that the other person suffers as a result of that detrimental action or threat.	11 12
(1A) The damages may be recovered as for a tort in proceedings in the Industrial Relations Commission in Court Session.	13 14
(1B) Any remedy that may be given by a court for a tort may be given by the Industrial Relations Commission in proceedings under this section.	15 16
(1C) However, damages recoverable under this section do not include:	17
(a) exemplary or punitive damages, or	18
(b) damages in the nature of aggravated damages.	19
(2) In determining whether a reason that detrimental action was taken or threatened against a person was in reprisal for that person making a public interest disclosure, it is sufficient if such reprisal was one of the reasons for taking or threatening detrimental action and it does not matter that there were other reasons for taking detrimental action.	20 21 22 23 24
(3) This section extends to a case where the person who takes or threatens detrimental action does so because the person believes or suspects that the other person made or may have made or may make a public interest disclosure even if the other person did not in fact make a public interest disclosure.	25 26 27 28
<b>[36] Section 20B Injunctions to prevent detrimental action taken or threatened in reprisal for disclosure</b>	29 30
Omit “(Protection against reprisals)” from section 20B (1).	31
Insert instead “(Offence of taking or threatening detrimental action against a person in reprisal for a public interest disclosure)”.	32 33
<b>[37] Section 25 Referral of disclosures by investigating authorities</b>	34
Omit section 25 (1). Insert instead:	35
(1) An investigating authority may refer any disclosure concerning an allegation of serious public sector wrongdoing or local government pecuniary interest contravention that is made to it 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.	36 37 38 39 40
<b>[38] Section 26 Referral of disclosures by public officials to which they are made</b>	41
Omit section 26 (1). Insert instead:	42
(1) A public official may refer any disclosure concerning an allegation of any serious public sector wrongdoing that is made to the public official under Part 2 to an investigating authority or to another public official or public	43 44 45

	authority considered by the public official to be appropriate in the circumstances, for investigation or other action.	1 2
<b>[39]</b>	<b>Section 26A Transitional disclosure procedure when public authority becomes separate office within another public authority</b>	3 4
	Omit section 26A (2) (a) and (b). Insert instead:	5
	(a) a procedure is established by the new public authority that provides for the reporting of allegations of serious public sector wrongdoing by officers of the separate office,	6 7 8
	(b) an existing procedure of the new public authority is varied or confirmed to be applicable to the reporting of allegations of serious public sector wrongdoing by officers of the separate office.	9 10 11
<b>[40]</b>	<b>Section 28 False or misleading disclosures</b>	12
	Omit “A public official”. Insert instead “A person”.	13
<b>[41]</b>	<b>Schedule 2 Savings, transitional and other provisions</b>	14
	Insert after Part 6:	15
<b>Part 7</b>	<b>Provisions consequent on enactment of Public Interest Disclosures Amendment (Extension of Protections) Act 2013</b>	16 17 18
<b>22</b>	<b>Meaning of “amending Act”</b>	19
	In this Part: <i>amending Act</i> means the <i>Public Interest Disclosures Amendment (Extension of Protections) Act 2013</i> .	20 21 22
<b>23</b>	<b>Disclosures made by persons who are not public officials</b>	23
	A disclosure by a person who is not a public official is protected by this Act even if it is made about conduct or activities engaged in, or about matters arising, before the commencement of the amending Act.	24 25 26
<b>24</b>	<b>Disclosures about scientific misconduct or risks to the environment, public health or safety</b>	27 28
	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 public official acting in, or purporting to act in, his or her official capacity:	29 30 31
	(a) is or has been involved in scientific misconduct, or	32
	(b) is or has been involved in an activity that is carried on in an environmentally unsatisfactory manner, or	33 34
	(c) has acted or is omitting to act in a manner that results in a danger to the environment, or	35 36
	(d) has acted or is omitting to act in a manner that results in, or increases, a risk of danger to the environment, or	37 38
	(e) has acted or is omitting to act in a manner that results in a danger to public health or safety, or to both public health and safety, or	39 40

	(f) has acted or is omitting to act in a manner that results in, or increases, a risk of danger to public health or safety, or to both public health and safety,	1 2 3
	is protected by this Act even if it is made about conduct or activities engaged in, about omissions, or about matters arising, before the commencement of the amending Act.	4 5 6
<b>25</b>	<b>Offence for taking detrimental action not taken substantially in reprisal for disclosure</b>	7 8
	Section 20 (1) (as substituted by the amending Act) does not apply so as to extend the operation of the subsection (as in force immediately before its substitution) in respect of detrimental action taken or threatened against a person before the commencement of the amending Act.	9 10 11 12
<b>26</b>	<b>Disciplinary action for taking detrimental action not taken substantially in reprisal for disclosure</b>	13 14
	Section 20AA does not apply so as to extend the operation of section 20 (1B) (as in force immediately before its substitution) in respect of detrimental action taken or threatened against a person before the commencement of the amending Act.	15 16 17 18
<b>27</b>	<b>Compensation for detrimental action not taken substantially in reprisal for disclosure</b>	19 20
	Section 20A (as amended by the amending Act) does not apply so as to extend the operation of that section in respect of detrimental action taken or threatened against a person before the commencement of the amending Act.	21 22 23
<b>28</b>	<b>Amendments to other legislation concerning detrimental action not substantially in reprisal for disclosure</b>	24 25
	The amendments made by Schedule 2.2, 2.4, 2.6 [1], 2.9, 2.13 and 2.14 to the amending Act do not apply so as to extend the provisions amended to detrimental action taken before the commencement of the amending Act that was not substantially in reprisal for another person making a public interest disclosure or other disclosure or to detrimental action threatened before the commencement of the amending Act.	26 27 28 29 30 31

<b>Schedule 2</b>	<b>Amendment of other legislation</b>	1
<b>2.1</b>	<b>Defamation Act 2005 No 77</b>	2
[1]	<b>Schedule 1 Additional publications to which absolute privilege applies</b>	3
	Omit “section 8 (1) (b), (c) or (c1)” from clause 26 (1).	4
	Insert instead “section 8 (1) (b), (b1), (c) or (c1)”.	5
[2]	<b>Schedule 1, clause 26 (1)</b>	6
	Insert “(including scientific misconduct)” after “corrupt conduct”.	7
<b>2.2</b>	<b>Education (School Administrative and Support Staff) Act 1987 No 240</b>	8
[1]	<b>Section 29 Meaning of “misconduct”</b>	9
	Insert “or threatening” after “taking” wherever occurring in section 29 (1) (c) and (d).	10
[2]	<b>Section 29 (1) (c)</b>	11
	Omit “that is substantially in reprisal for the person making”.	12
	Insert instead “if one of the reasons for taking the action is that the person made”.	13
[3]	<b>Section 29 (1) (d)</b>	14
	Omit “that is substantially in reprisal for an internal disclosure made by that person”.	15
	Insert instead “if one of the reasons for taking the action is that the person made an internal disclosure”.	16 17
<b>2.3</b>	<b>Government Sector Employment Act 2013 No 40</b>	18
[1]	<b>Section 69 Misconduct—Public Service and other prescribed government sector employees</b>	19 20
	Insert “or threatening” after “taking” wherever occurring in paragraphs (b) and (c) of the definition of <i>misconduct</i> in section 69 (1).	21 22
[2]	<b>Section 69 (1), definition of “misconduct”</b>	23
	Omit “that is substantially in reprisal for the person making” from paragraph (b).	24
	Insert instead “if one of the reasons for taking the action is that the person made”.	25
[3]	<b>Section 69 (1), definition of “misconduct”</b>	26
	Omit “that is substantially in reprisal for a disclosure made by that employee” from paragraph (c).	27 28
	Insert instead “if one of the reasons for taking the action is that the employee made a disclosure”.	29 30
<b>2.4</b>	<b>Health Services Regulation 2013</b>	31
[1]	<b>Clause 14 Definitions</b>	32
	Insert “or threatening” after “taking” wherever occurring in paragraphs (c) and (d) of the definition of <i>misconduct</i> in clause 14 (1).	33 34

<b>[2] Clause 14 (1), definition of “misconduct”</b>	1
Omit “that is substantially in reprisal for” from paragraph (c).	2
Insert instead “if one of the reasons for taking the action is reprisal for”.	3
<b>[3] Clause 14 (1), definition of “misconduct”</b>	4
Omit “that is substantially in reprisal for” from paragraph (d).	5
Insert instead “if one of the reasons for taking the action is reprisal for”.	6
<b>2.5 Independent Commission Against Corruption Act 1988 No 35</b>	7
<b>[1] Section 8 General nature of corrupt conduct</b>	8
Insert at the end of section 8 (1) (d):	9
, or	10
(e) any scientific misconduct of a public official, or former public official, acting or purporting to act in his or her official capacity, being any of the following:	11
(i) fabrication, falsification, plagiarism or deception in proposing, carrying out or reporting the results of scientific research,	12
(ii) failure of a researcher to declare or manage a serious conflict of interest,	13
(iii) misconduct relating to scientific analysis, scientific evaluation or the giving of scientific advice,	14
(iv) avoidable failure to follow research proposals as approved by a research ethics committee where this failure may result in unreasonable risk or harm to humans, animals or the environment,	15
(v) the wilful concealment, or facilitation, of conduct referred to in subparagraphs (i)–(iv).	16
<b>[2] Section 111D Complaints about Commission or officer of Commission or Inspector</b>	17
Omit “A public official within the meaning of the <i>Public Interest Disclosures Act 1994</i> ” from section 111D (1).	18
Insert instead “Any person”.	19
<b>2.6 Industrial Relations Act 1996 No 17</b>	20
<b>[1] Section 98 Right of appeal</b>	21
Omit “substantially in reprisal for” from section 98 (2).	22
Insert instead “for reasons that included reprisal for”.	23
<b>[2] Section 153 Jurisdiction of the Commission in Court Session</b>	24
Insert after section 153 (1) (jb):	25
(jc) proceedings under section 20A of the <i>Public Interest Disclosures Act 1994</i> ,	26
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<b>2.7 Local Government Act 1993 No 30</b>	1
<b>Section 429A Complaints about councils, councillors, delegates and staff</b>	2
Omit “A public official within the meaning of the <i>Public Interest Disclosures Act 1994</i> ” from section 429A (1).	3 4
Insert instead “Any person”.	5
<b>2.8 Ombudsman Act 1974 No 68</b>	6
<b>[1] Section 5 Definitions</b>	7
Insert in alphabetical order in section 5 (1):	8
<i>public health or safety</i> includes the health and safety of persons:	9
(a) under lawful care or control, and	10
(b) using community facilities or services provided by a public authority or local government authority.	11 12
<b>[2] Section 20 Powers of entry and other inspection powers of Ombudsman</b>	13
Insert at the end of section 20 (b):	14
, and	15
(c) for the purpose of analysis, take samples of any substance found on the premises, and	16 17
(d) examine and inspect any apparatus or equipment on any premises, and	18
(e) take such photographs, films and audio, video and other recordings as the Ombudsman considers necessary, and	19 20
(f) for the purpose of collecting evidence of a contravention of this Act or the regulations, take samples of any substance or take possession of any thing that the Ombudsman believes may constitute such evidence.	21 22 23
<b>[3] Section 26 Report of investigation</b>	24
Insert after section 26 (1) (f):	25
(f1) conduct that results in a danger to public health or safety, or to both public health and safety,	26 27
(f2) conduct that results in, or increases, a risk of danger to public health or safety, or to both public health and safety,	28 29
<b>2.9 Police Act 1990 No 47</b>	30
<b>[1] Section 206 Protection from detrimental action taken because of making of protected     allegation</b>	31 32
Insert “or threatens” after “takes” in section 206 (2).	33
<b>[2] Section 206 (2)</b>	34
Omit “being action that is substantially in reprisal for”.	35
Insert instead “where one of the reasons for taking the action is reprisal for”.	36
<b>[3] Section 206 (2A)</b>	37
Insert “or threatened” after “taken”.	38

<b>[4] Section 206 (2A)</b>	1
Omit “was not substantially in reprisal for”.	2
Insert instead “was not taken for reasons that included reprisal for”.	3
<b>2.10 Police Integrity Commission Act 1996 No 28</b>	4
<b>Section 135 Complaints</b>	5
Omit “A public official within the meaning of the <i>Public Interest Disclosures Act 1994</i> ” wherever occurring in section 135 (1) and (2).	6 7
Insert instead “Any person”.	8
<b>2.11 Protection of the Environment Operations Act 1997 No 156</b>	9
<b>[1] Section 184 Purposes for which powers under Chapter may be exercised</b>	10
Insert after section 184 (c):	11
(d) for dealing with a complaint under section 186A.	12
<b>[2] Section 186A</b>	13
Insert after section 186:	14
<b>186A Complaints to EPA about activities carried on in environmentally unsatisfactory manner and risks to environment</b>	15 16
(1) Any person may complain to the EPA that the person making the complaint honestly believes, on reasonable grounds, that a public authority (within the meaning of the <i>Public Interest Disclosures Act 1994</i> ), or an officer of a public authority, acting, or purporting to act, in his or her official capacity:	17 18 19 20
(a) is or has been involved in an activity that is carried on in an environmentally unsatisfactory manner, or	21 22
(b) has acted or is omitting to act in a manner that results in a danger to the environment, or	23 24
(c) has acted or is omitting to act in a manner that results in, or increases, a risk of danger to the environment.	25 26
(2) A complaint may be made orally or in writing.	27
(3) The EPA may deal with a complaint made under this section:	28
(a) by means of an investigation authorised under this Chapter, or	29
(b) in such other manner as the EPA considers appropriate.	30
(4) The EPA may discontinue an investigation of a complaint.	31
<b>2.12 Public Finance and Audit Act 1983 No 152</b>	32
<b>[1] Section 52C Definitions</b>	33
Omit the definition of <i>public official</i> .	34
<b>[2] Section 52D Complaints about waste of public money</b>	35
Omit “A public official” from section 52D (1). Insert instead “Any person”.	36

<b>2.13 Public Sector Employment and Management Act 2002 No 43</b>	1
<b>[1] Section 43 Meaning of “misconduct”</b>	2
Insert “or threatening” after “taking” wherever occurring in section 43 (1) (c) and (d).	3
<b>[2] Section 43 (1) (c)</b>	4
Omit “that is substantially in reprisal for”.	5
Insert instead “if one of the reasons for taking the action is reprisal for”.	6
<b>[3] Section 43 (1) (d)</b>	7
Omit “that is substantially in reprisal for”.	8
Insert instead “if one of the reasons for taking the action is reprisal for”.	9
<b>2.14 Teaching Service Act 1980 No 23</b>	10
<b>[1] Section 93C Meaning of “misconduct”</b>	11
Insert “or threatening” after “taking” wherever occurring in section 93C (1) (c) and (d).	12
<b>[2] Section 93C (1) (c)</b>	13
Omit “that is substantially in reprisal for”.	14
Insert instead “if one of the reasons for taking the action is reprisal for”.	15
<b>[3] Section 93C (1) (d)</b>	16
Omit “that is substantially in reprisal for”.	17
Insert instead “if one of the reasons for taking the action is reprisal for”.	18