



New South Wales

Public Interest Disclosures Bill 2021

Explanatory note

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

Overview of Bill

The objects of this Bill are to provide for the protection of persons who make public interest disclosures and to provide for making and dealing with the disclosures.

This Bill has been prepared in response to—

- (a) the *Review of the Public Interest Disclosures Act 1994*, dated October 2017, by the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, and
- (b) the *Report on the inquiry into protections for people who make voluntary disclosures to the Independent Commission Against Corruption*, dated November 2017, by the Joint Committee on the Independent Commission Against Corruption.

This Bill repeals and replaces the *Public Interest Disclosures Act 1994*. In particular, this Bill—

- (a) defines the categories of public interest disclosure, and
- (b) specifies conditions under which a disclosure is a voluntary public interest disclosure, and
- (c) enables a public official to make a voluntary public interest disclosure to an agency whether or not the agency has jurisdiction to investigate the disclosure, and
- (d) makes it an offence to take detrimental action against a person based on the suspicion, belief or awareness the person, or another person, has made a public interest disclosure, and
- (e) protects persons who make public interest disclosures from detriment and liability in relation to the making of the disclosures, and

- (f) requires agencies to adopt policies specifying their procedures for dealing with voluntary public interest disclosures, and
- (g) requires agencies to carry out training in relation to the public interest disclosure scheme, and
- (h) specifies how agencies are to deal with voluntary public interest disclosures and respond to findings of serious wrongdoing or other misconduct, and
- (i) requires agencies to provide the Ombudsman with an annual return about the public interest disclosures they receive.

This Bill also amends certain other Acts to align the protections in this Bill with the protections available under the other Acts to persons who make voluntary disclosures in the public interest or otherwise assist agencies authorised under the other Acts to investigate wrongdoing or misconduct. In particular, this Bill amends protections available under—

- (a) the *Independent Commission Against Corruption Act 1988*, and
- (b) the *Ombudsman Act 1974*, and
- (c) the *Law Enforcement Conduct Commission Act 2016*.

This Bill makes consequential and related amendments to other Acts and instruments.

Outline of provisions

Part 1 Introduction

Part 1 contains introductory provisions.

Part 1, Division 1 contains preliminary machinery provisions that—

- (a) set out the name, also called the short title, of the proposed Act, and
- (b) provide that the proposed Act commences on the day that is 18 months after the date of assent, or an earlier day or days to be appointed by proclamation, and
- (c) set out the objects of the proposed Act, and
- (d) provide that the proposed Act binds the Crown, and
- (e) provide that the Dictionary in Schedule 2 of the proposed Act defines words used in the proposed Act, and
- (f) set out the responsibilities of the head of an agency in relation to functions conferred or imposed on the agency by the proposed Act.

Part 1, Division 2 sets out the relationship between the proposed Act and other Acts and laws.

Clause 7 provides that—

- (a) the obligations, protections and remedies arising under the proposed Act in relation to a matter are additional to the obligations, protections and remedies arising under another Act or law in relation to the matter, and
- (b) the proposed Act, with a specified exception, does not confer powers to deal with public interest disclosures, and
- (c) the proposed Act prevails, with specified exceptions, to the extent of an inconsistency with another Act or law.

Clauses 8 and 9 provide that the provisions of another Act or law, to the extent that they deal with legal professional privilege and the privilege against self-incrimination in specified ways, prevail over inconsistent provisions of the proposed Act. The proposed sections ensure the proposed Act will not affect the availability of the privileges under other Acts or laws under which persons may be compelled to provide information.

Clause 10 provides that the proposed Act does not affect the availability of public interest immunity claims, but is subject to provisions of other Acts or laws affecting the availability of public interest immunity claims.

Clause 11 provides that certain provisions of other Acts dealing with powers of compulsion and entry prevail over inconsistent provisions of the proposed Act.

Clause 12 excludes agencies, within the meaning of the proposed Act, in relation to the *Corporations Act 2001* of the Commonwealth, section 1317AAB, ensuring an agency will not be a regulated entity under that Act, Part 9.4AAA.

Part 1, Division 3 defines key terms, other than *public interest disclosure*, used in the proposed Act.

Clause 13 defines *serious wrongdoing* as corrupt conduct, a government information contravention, a local government pecuniary interest contravention, serious maladministration, a privacy contravention or a serious and substantial waste of public money. The categories of serious wrongdoing are further defined in the Dictionary.

Clauses 14–17 respectively define *public official*, *manager* of a public official, *agency* and *head* of an agency. The proposed sections include a power for the regulations to declare—

- (a) additional persons or bodies to be, or not to be, public officials or agencies, and
- (b) a specified agency to be part of and included in another specified agency, and not to be a separate agency, for the purposes of the proposed Act or specified provisions of the proposed Act.

Clause 18 defines a *disclosure officer* for an agency as a person responsible for receiving voluntary public interest disclosures on behalf of the agency. The disclosure officers for an agency include the head of the agency and persons, or members of a class of persons, specified in the agency's public interest disclosure policy as persons responsible for receiving voluntary public interest disclosures on behalf of the agency.

Clause 19 defines an *integrity agency* as 1 of certain persons or bodies with jurisdiction under other Acts or laws to investigate a category or categories of serious wrongdoing. The proposed section includes a power for the regulations to declare additional persons or bodies to be integrity agencies.

Clause 20 specifies the relationships between certain key terms used in the proposed Act. In particular, the proposed section sets out—

- (a) when a disclosure is *about* serious wrongdoing, and
- (b) when a disclosure *relates to* an agency, and
- (c) when a public official is *associated with* an agency.

Part 2 Public interest disclosures

Part 2, Division 1 sets out the categories of *public interest disclosure*.

Clause 21 divides public interest disclosures into voluntary public interest disclosures, witness public interest disclosures and mandatory public interest disclosures.

Clause 22 defines a *witness public interest disclosure* as a disclosure of information, in an investigation of serious wrongdoing, at the request of or in response to a requirement of a person or agency investigating the serious wrongdoing. However, a disclosure is not a witness public interest disclosure if it is a mandatory public interest disclosure.

Clause 23 defines a *mandatory public interest disclosure* as a disclosure about serious wrongdoing made by a public official carrying out the official's ordinary duties or under a legal obligation.

Part 2, Division 2 deals with voluntary public interest disclosures.

Clause 24 defines a *voluntary public interest disclosure* as a disclosure that complies with the conditions in proposed sections 25–27 or is deemed to be a voluntary public interest disclosure under proposed section 29. The proposed section also provides that a disclosure may be a voluntary public interest disclosure whether or not it is made orally, anonymously or with reference to the proposed Act, and that a disclosure is not a voluntary public interest disclosure if

it is a witness public interest disclosure or a mandatory public interest disclosure or if it is made orally to a Minister or a member of a Minister's staff.

Clause 25 imposes the condition that the disclosure be made by a public official who is not a member of Parliament.

Clause 26 imposes the condition that the maker of the disclosure honestly, and on reasonable grounds, believes the disclosure shows or tends to show serious wrongdoing. The proposed section also excludes certain disclosures relating to disagreements with government policy or personal grievances.

Clause 27 imposes the condition that the disclosure be made to 1 or more specified recipients, including heads of agencies and other disclosure officers for agencies.

Clause 28 imposes the following additional conditions where the recipient of the disclosure is a member of Parliament or a journalist—

- (a) the disclosure must be substantially true,
- (b) the maker of the disclosure must have previously made substantially the same voluntary public interest disclosure (the *previous disclosure*) to 1 or more specified recipients,
- (c) the previous disclosure must not have been anonymous,
- (d) the maker of the previous disclosure must not have waived, in writing, the right to receive information under the proposed Act in relation to the previous disclosure,
- (e) the maker of the previous disclosure must not have received specified information within specified time frames about how the previous disclosure has been dealt with, or must have been notified of a decision not to deal with, or to cease dealing with, the previous disclosure.

Clause 29 specifies conditions under which the head of an agency may determine a disclosure is a voluntary public interest disclosure even if the disclosure would not otherwise be a voluntary public interest disclosure. The proposed section also specifies conditions under which the determination may be revoked.

Part 3 Protections

Part 3 deals with the protection of persons who make public interest disclosures from detriment and liability.

Part 3, Division 1 contains provisions applying generally to the proposed Part.

Clause 30 provides that the proposed Part applies to a public interest disclosure from the time the disclosure is first made.

Clause 31 provides that the protections in the proposed Part do not prevent certain action, referred to as *reasonable management action*, from being taken in relation to public officials.

Part 3, Division 2 contains provisions relating to detrimental action.

Clause 32 defines *detriment* to a person as disadvantage to the person, including injury, damage to property or reputation, harassment, unfavourable workplace treatment, discrimination and disciplinary action. The proposed section also defines *detrimental action* against a person as an act or omission causing, comprising, involving or encouraging detriment or the threat of detriment to the person.

Clause 33 makes it an indictable offence, referred to in the proposed Act as a *detrimental action offence*, to take detrimental action against a person while suspecting, believing or being aware that the person, or another person, has made, may have made, may make or proposes to make a public interest disclosure if the suspicion, belief or awareness is a contributing factor to the taking of the detrimental action.

Clause 34 requires agencies to refer information relating to detrimental action offences, including allegations and evidence, to specified persons and bodies.

Clause 35 makes a person who takes detrimental action against another person, in the circumstances specified in proposed section 33, liable in damages for injury, damage or loss suffered as a result. The damages may include damages in the nature of exemplary damages.

Clause 36 specifies additional orders a court may make if satisfied the damages are recoverable in circumstances where the detrimental action was taken in connection with the person's position or role as an employee.

Clause 37 enables specified persons and bodies to apply to the Supreme Court for an injunction relating to the commission or possible commission of a detrimental action offence.

Clause 38 provides, with specified exceptions, that a person who institutes proceedings for damages or an injunction under the proposed Division is not liable to pay costs incurred by another party to the proceedings.

Clause 39 provides that a person may institute proceedings for damages or an injunction under the proposed Division even if no prosecution has been brought in relation to the relevant detrimental action or the person against whom the proceedings are instituted has been acquitted of a detrimental action offence on the same, or substantially the same, facts relied on in the proceedings.

Part 3, Division 3 contains provisions dealing with civil and criminal liability.

Clause 40 provides that a person who makes a public interest disclosure does not incur civil or criminal liability, and is not liable to disciplinary action, in relation to the making of the disclosure. The proposed section applies to witness public interest disclosures only to the extent that the information disclosed is relevant or constitutes an independent disclosure showing or tending to show serious wrongdoing.

Clause 41 provides that a person who makes a self-incriminating public interest disclosure is not generally protected against liability for the person's past conduct. The proposed section also enables the Attorney General to give the person an undertaking that the disclosure or the fact of the disclosure will not be used in evidence against the person, other than in proceedings relating to the falsity of the disclosure.

Part 4 Public interest disclosure policies

Part 4 deals with public interest disclosure policies.

Clause 42 makes it mandatory for an agency to have a public interest disclosure policy.

Clause 43 requires an agency's public interest disclosure policy to specify the agency's procedures for dealing with voluntary public interest disclosures, minimising the risk of detrimental action being taken as a result of voluntary public interest disclosures being made and complying with other requirements under the proposed Act. The policy must also include information about protections available under the proposed Act and information about disclosure officers for the agency enabling the officers to be contacted.

Clause 44 requires an agency, in preparing its public interest disclosure policy, to have regard to guidelines that may be published by the Ombudsman under proposed section 73. **Clause 45** enables an agency to adopt a model public interest disclosure policy that may be published under proposed section 73(a).

Clause 46 provides for public interest disclosure policies to be reviewed and updated in circumstances where agencies are amalgamated or divided.

Clause 47 requires an agency to make its public interest disclosure policy accessible on the agency's website and intranet or by other means.

Clause 48 requires an agency to comply with training and awareness requirements in relation to the agency's public interest disclosure policy and other specified matters. The proposed section includes a power for the regulations to make further provision about how agencies are to comply with the requirements.

Part 5 Receiving and dealing with voluntary public interest disclosures

Part 5 deals with action to be taken by agencies that receive voluntary public interest disclosures. The provisions of the proposed Part do not apply to witness public interest disclosures or mandatory public interest disclosures.

Part 5, Division 1 deals with the receipt of disclosures that are or may be voluntary public interest disclosures.

Clause 49 requires an agency that receives a disclosure to deal with the disclosure as a voluntary public interest disclosure under the proposed Part, Division 2 if the disclosure is, or appears to be, a voluntary public interest disclosure. **Clause 50** specifies when an agency *receives* a disclosure.

Clauses 51 and 52 specify circumstances in which certain persons to whom a disclosure mentioned in proposed section 49 is made are to communicate the disclosure to a disclosure officer for an agency or take other action to cause the disclosure to be received by an agency.

Clause 53 requires persons to whom a disclosure mentioned in proposed section 49 is made orally to make a written record of the disclosure.

Part 5, Division 2 sets out how agencies are to deal with voluntary public interest disclosures. Except for the limited investigative powers conferred on the Ombudsman and the Independent Commission Against Corruption by proposed section 58, the proposed Division does not authorise an agency to deal with a voluntary public interest disclosure in a way in which the agency is not otherwise authorised to deal with the disclosure.

Clause 54 contains general provisions about agency action under the proposed Division. An agency must have regard to guidelines that may be published by the Ombudsman under proposed section 73 and may consult the Ombudsman, or another integrity agency, in relation to action or proposed action to deal with a voluntary public interest disclosure.

Clause 55 requires an agency that receives a voluntary public interest disclosure relating to the agency to decide how to deal with the disclosure. The agency's actions may include investigation or referral. The proposed section also requires an agency to provide the Ombudsman with written reasons for a decision neither to investigate the relevant serious wrongdoing nor to refer the disclosure, or for a decision to cease investigating the relevant serious wrongdoing without completing the investigation or referring the disclosure.

Clause 56 requires an agency that receives a voluntary public interest disclosure not relating to the agency to deal with the disclosure in accordance with an Act or law authorising the agency to investigate the relevant serious wrongdoing, to refer the disclosure or to deal with the disclosure in accordance with another applicable arrangement.

Clause 57 provides for the referral of voluntary public interest disclosures and requires agencies to consider appropriateness and the risk of detrimental action when referring a voluntary public interest disclosure in circumstances where the referral is not mandatory.

Clause 58 confers limited investigative powers on the Ombudsman and the Independent Commission Against Corruption in relation to voluntary public interest disclosures about specified wrongdoing by certain integrity agencies and officers of integrity agencies.

Clause 59 requires an agency dealing with a voluntary public interest disclosure to provide access to the agency's public interest disclosure policy and other specified information to the maker of the disclosure. The proposed section does not apply to anonymous disclosures or to the extent that the maker of the disclosure waives, in writing, the right to receive the information.

Clause 60 provides for the internal review of certain agency decisions made under the proposed Part.

Clause 61 specifies circumstances in which an agency is to take steps to assess and minimise the risk of detrimental action being taken as a result of a voluntary public interest disclosure being made. **Clause 62** makes the agency or, under certain conditions, the State liable in damages for injury, damage or loss suffered as a result of the agency's failure to take the steps.

Clause 63 contains a power for the regulations to make further provision about how agencies may deal with voluntary public interest disclosures.

Part 5, Division 3 contains miscellaneous provisions relating to the process of dealing with voluntary public interest disclosures.

Clause 64 prohibits, with specified exceptions, public officials and agencies from disclosing information tending to identify a person as the maker of a voluntary public interest disclosure.

Clause 65 requires public officials to use their best endeavours to assist in investigations of serious wrongdoing.

Clause 66 requires an agency to take appropriate action, referred to in the proposed Act as *corrective action*, in response to a finding of serious wrongdoing or other misconduct that results from an investigation of a voluntary public interest disclosure relating to the agency.

Part 6 Oversight of Act

Part 6 deals with the oversight of the proposed Act.

Part 6, Division 1 contains provisions relating to the Public Interest Disclosures Steering Committee (the *Steering Committee*).

Clause 67 establishes the Steering Committee and specifies its members.

Clause 68 sets out the functions of the Steering Committee.

Clause 69 provides for a member of the Steering Committee to appoint a nominee to act in place of the member.

Clause 70 sets out the quorum requirements for a meeting of the Steering Committee.

Clause 71 provides for the Steering Committee to determine its own procedures.

Part 6, Division 2 provides for the oversight of the public interest disclosure scheme by the Ombudsman.

Clause 72 confers advisory, auditing, monitoring, reporting and other functions on the Ombudsman.

Clause 73 provides that guidelines published by the Ombudsman to assist agencies in exercising functions under the proposed Act may be published in the form of a model interest disclosure policy and may relate to all aspects of agencies' functions under the proposed Act.

Clause 74 provides for the Ombudsman to deal by conciliation with disputes arising under the proposed Act or a public interest disclosure policy if requested to do so by an agency. The proposed section includes a power for the regulations to make further provision about the Ombudsman's functions under the proposed section.

Clause 75 enables the Ombudsman to require agencies to provide information or documents for the purposes of exercising the Ombudsman's auditing and monitoring functions under the proposed Act.

Clause 76 requires the Ombudsman to report annually to Parliament on the administration of, and compliance by agencies with, the proposed Act. **Clause 77** enables the Ombudsman to make a special report to Parliament on a matter arising in connection with the exercise of the Ombudsman's functions under the proposed Act.

Clause 78 requires an agency to provide the Ombudsman with an annual return that includes specified information about voluntary public interest disclosures received or dealt with by the agency. The proposed section includes a power for the regulations to make further provision about the information to be included in the annual return and the form in which the information is to be provided.

Part 7 Miscellaneous

Part 7 contains miscellaneous provisions relating to the operation of the proposed Act.

Clause 79 provides that the application of the proposed Act to a public interest disclosure is unaffected by certain matters.

Clause 80 enables the head of an agency to delegate functions, with specified exceptions, to a person employed in or by the agency or the head of another agency.

Clause 81 provides for a function of an agency under the proposed Act to be exercised by a person employed in or by the agency who is designated by the head of the agency to exercise the function. The proposed section also provides for an agency to arrange for another agency, or an entity that is not an agency, to exercise functions under the proposed Act on behalf of the agency. Details of the arrangement must be published on the agency's website and provided to the Ombudsman.

Clause 82 requires certain terms to be included in contracts under which a person or body is engaged to provide services on behalf of an agency. The proposed section applies only to contracts entered into on or after the day on which the proposed section commences. The proposed section includes a power for the regulations to make further provision for terms that must, or must not, be included in the contracts.

Clause 83 permits an agency to provide information relating to a public interest disclosure to another agency if doing so is reasonably necessary for the exercise of either agency's functions under the proposed Act. The agency may also provide the information to a person or body investigating misconduct or wrongdoing under a law of another State, the Commonwealth or a Territory of the Commonwealth, if doing so is reasonably necessary for the exercise of functions under that law by the person or body.

Clause 84 provides that a person must not, in making or purporting to make a public interest disclosure or in providing information relating to a public interest disclosure, wilfully make a false statement to, or mislead or attempt to mislead, the agency or person to whom the disclosure or purported disclosure is made or the information is provided. The maximum penalty for the offence is 100 penalty units or imprisonment for 2 years, or both.

Clause 85 provides that a person must not provide or offer to provide beneficial treatment to another person for the purposes of influencing the other person to refrain from making a public interest disclosure or to withdraw a public interest disclosure. The proposed section also provides that a person must not prevent or attempt to prevent a person, or a group or class of persons, from making public interest disclosures. The maximum penalty for both offences is 100 penalty units.

Clause 86 deals with proceedings for offences against the proposed Act.

Clause 87 provides that the proposed Act does not affect the rights and privileges of Parliament in relation to freedom of speech and Parliamentary debates and proceedings.

Clause 88 contains regulation-making powers under the proposed Act. The powers include a power for the regulations to exempt specified agencies or classes of agencies from specified provisions of the proposed Act.

Clause 89 provides for the review of the proposed Act by a joint committee of members of Parliament. The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the proposed Act.

Clause 90 repeals the *Public Interest Disclosures Act 1994* and the *Public Interest Disclosures Regulation 2011*.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions.

Schedule 1, Part 1 provides that the regulations may contain provisions of a savings or transitional nature consequent on the commencement of a provision of the proposed Act or a provision amending the proposed Act.

Schedule 1, Part 2, Division 1 contains transitional provisions relating to the handling of disclosures made before, or remade after, the repeal of the *Public Interest Disclosures Act 1994* (the *former Act*).

Schedule 1, clause 3 provides that a disclosure of information made before the repeal of the former Act is to be dealt with under the law as in force from time to time before the repeal.

Schedule 1, clauses 4 and 5 contain provisions relating to a scenario in which substantially the same disclosure is made, by the same person, both before and after the repeal of the former Act.

Proposed section 4 contains a mechanism to enable agencies to consolidate the exercise of functions under the 2 different legislative schemes that may apply to the scenario. The mechanism does not affect the protections conferred by either scheme. Proposed section 5 contains further provisions relating to disclosures made to members of Parliament and journalists.

Schedule 1, Part 2, Division 2 contains machinery transitional provisions relating to the proposed *Public Interest Disclosures Regulation 2021*.

Schedule 2 Dictionary

Schedule 2 contains the Dictionary of words used in the proposed Act.

Schedule 3 Public Interest Disclosures Regulation 2021

Schedule 3 contains the proposed *Public Interest Disclosures Regulation 2021*. The proposed Regulation requires an agency—

- (a) to take specified action to ensure each public official associated with the agency has access to the agency's public interest disclosure policy, and
- (b) to ensure the training required by the proposed Act takes place within specified time frames, and
- (c) to include specified information in the agency's annual return, including information about purported public interest disclosures that were not in fact public interest disclosures, and
- (d) to report separately in the agency's annual return about voluntary public interest disclosures relating to the agency and other voluntary public interest disclosures, and
- (e) if the agency has arranged to provide an annual return on behalf of another agency or a group of agencies—to provide a separate annual return for each agency to which the arrangement relates.

Schedule 4 Amendment of Independent Commission Against Corruption Act 1988 No 35

Schedule 4 contains amendments to the *Independent Commission Against Corruption Act 1988* (the *ICAC Act*).

Schedule 4[5] inserts Part 8A in the ICAC Act.

Proposed section 79B provides that the objects of the proposed Part are—

- (a) to adopt protections for the makers of complaints or disclosures of misconduct or wrongdoing that are substantially aligned with the protections available to the makers of public interest disclosures under the proposed Act, and
- (b) to consolidate the protections available under the ICAC Act to persons who assist the Independent Commission Against Corruption or the Inspector of the Independent Commission Against Corruption.

Proposed sections 79C–79E define words used in the proposed Part, including—

- (a) ***protected obligation***, a term denoting action taken under a power of compulsion conferred by the ICAC Act, and
- (b) ***protected action***, a term denoting action that attracts protections set out in the proposed Part, including compliance with or performance of a protected obligation but not including the making of a public interest disclosure, and
- (c) ***limited protected action***, a term denoting certain types of protected action that attract some, but not all, of the protections set out in the proposed Part, and
- (d) ***protected person***, a term denoting a person who takes protected action, and

- (e) **primary agency**, a term denoting the principal persons or bodies authorised to deal with misconduct or wrongdoing under the ICAC Act.

Proposed sections 79F–79R, which include both substantive and machinery provisions, adopt protections for protected persons that are substantially aligned with the protections available to the makers of public interest disclosures under the proposed Act. Proposed sections 79S and 79T relocate existing protections within the ICAC Act to the proposed Part.

Schedule 4[1]–[4] and [6]–[15] make amendments consequent on the proposed Act and the insertion of proposed Part 8A. In particular, the proposed amendments—

- (a) repeal provisions of the ICAC Act that are relocated or consolidated within proposed Part 8A, and
- (b) align the maximum penalties for certain offences against the ICAC Act with the maximum penalties for corresponding offences against the proposed Act.

Schedule 5 Amendment of Ombudsman Act 1974 No 68

Schedule 5 contains amendments to the *Ombudsman Act 1974* (the ***Ombudsman Act***).

Schedule 5[9] inserts Part 4B in the Ombudsman Act.

Proposed section 31K provides that the objects of the proposed Part are—

- (a) to adopt protections for the makers of complaints or disclosures of misconduct or wrongdoing that are substantially aligned with the protections available to the makers of public interest disclosures under the proposed Act, and
- (b) to consolidate the protections available under the Ombudsman Act to persons who assist the Ombudsman.

Proposed sections 31L–31N define words used in the proposed Part, including—

- (a) **protected obligation**, a term denoting action taken under a power of compulsion conferred by the Ombudsman Act, and
- (b) **protected action**, a term denoting action that attracts protections set out in the proposed Part, including compliance with or performance of a protected obligation but not including the making of a public interest disclosure, and
- (c) **limited protected action**, a term denoting certain types of protected action that attract some, but not all, of the protections set out in the proposed Part, and
- (d) **protected person**, a term denoting a person who takes protected action.

Proposed sections 31O–31Z, which include both substantive and machinery provisions, adopt protections for protected persons that are substantially aligned with the protections available to the makers of public interest disclosures under the proposed Act.

Schedule 5[1]–[8] and [10]–[19] make amendments consequent on the proposed Act and the insertion of proposed Part 4B. In particular, the proposed amendments—

- (a) repeal provisions of the Ombudsman Act that are relocated or consolidated within proposed Part 4B, and
- (b) align the maximum penalties for certain offences against the Ombudsman Act with the maximum penalties for corresponding offences against the proposed Act.

Schedule 6 Amendment of Law Enforcement Conduct Commission Act 2016 No 61

Schedule 6 contains amendments to the *Law Enforcement Conduct Commission Act 2016* (the ***LECC Act***).

Schedule 6[14] inserts Part 6A in the LECC Act.

Proposed section 97A provides that the objects of the proposed Part are—

- (a) to adopt protections for the makers of complaints or disclosures of misconduct or wrongdoing that are substantially aligned with the protections available to the makers of public interest disclosures under the proposed Act, and
- (b) to consolidate the protections available under the LECC Act to persons who assist the Law Enforcement Conduct Commission, the Inspector of the Law Enforcement Conduct Commission or an examining Commissioner within the meaning of the LECC Act.

Proposed sections 97B–97D define words used in the proposed Part, including—

- (a) **protected obligation**, a term denoting action taken under a power of compulsion conferred by the LECC Act, and
- (b) **protected action**, a term denoting action that attracts protections set out in the proposed Part, including compliance with or performance of a protected obligation but not including the making of a public interest disclosure, and
- (c) **limited protected action**, a term denoting certain types of protected action that attract some, but not all, of the protections set out in the proposed Part, and
- (d) **protected person**, a term denoting a person who takes protected action, and
- (e) **primary agency**, a term denoting the principal persons or bodies authorised to deal with misconduct or wrongdoing under the LECC Act.

Proposed sections 97E–97Q, which include both substantive and machinery provisions, adopt protections for protected persons that are substantially aligned with the protections available to the makers of public interest disclosures under the proposed Act. Proposed sections 97R and 97S relocate existing protections within the LECC Act to the proposed Part.

Schedule 6[1]–[13] and [15]–[28] make amendments consequent on the proposed Act and the insertion of proposed Part 6A. In particular, the proposed amendments—

- (a) repeal provisions of the LECC Act that are relocated or consolidated within proposed Part 6A, and
- (b) align the maximum penalties for certain offences against the LECC Act with the maximum penalties for corresponding offences against the proposed Act.

Schedule 7 Amendments to police legislation

Schedule 7.1 contains amendments to the *Police Act 1990*.

Schedule 7.1[6] substantially aligns an existing offence provision with the detrimental action offence provision in the proposed Act, Part 3.

Schedule 7.1[1]–[5], [7] and [8] make other amendments consequent on the proposed Act.

Schedule 7.2 contains amendments to the *Police Regulation 2015* that are consequent on the proposed Act.

Schedule 8 Amendments to other legislation

Schedule 8.5 contains an amendment to the *Defamation Act 2005* (the **Defamation Act**). The amendment specifies matter arising under the proposed Act to which absolute privilege applies under the Defamation Act. The matter specified is—

- (a) matter that is published of or concerning a public interest disclosure—if the publication is by the maker of the disclosure and while making the disclosure, or
- (b) matter that is published of or concerning a public interest disclosure or a disclosure that appears to be a public interest disclosure—if the publication is by an agency or public official and while exercising a function under the proposed Act in relation to the disclosure.

Schedules 8.1–8.4 and 8.6–8.20 contain amendments to the following Acts and instruments that are consequent on the proposed Act—

- (a) the *Children’s Guardian Act 2019*,
- (b) the *Community Services (Complaints, Reviews and Monitoring) Act 1993*,
- (c) the *Crime Commission Act 2012*,
- (d) the *Criminal Procedure Act 1986*,
- (e) the *Education (School Administrative and Support Staff) Act 1987*,
- (f) the *Fire Brigades Regulation 2014*,
- (g) the *Government Information (Information Commissioner) Act 2009*,
- (h) the *Government Information (Public Access) Act 2009*,
- (i) the *Government Sector Audit Act 1983*,
- (j) the *Government Sector Employment Act 2013*,
- (k) the *Government Sector Finance Legislation (Repeal and Amendment) Act 2018*,
- (l) the *Health Records and Information Privacy Act 2002*,
- (m) the *Industrial Relations Act 1996*,
- (n) the *Local Government Act 1993*,
- (o) the *Major Events Act 2009*,
- (p) the *Members of Parliament Staff Act 2013*,
- (q) the *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Regulation 2018*,
- (r) the *Privacy and Personal Information Protection Act 1998*,
- (s) the *Teaching Service Act 1980*.