



New South Wales

# Public Interest Disclosures Amendment Bill 2011

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Public Interest Disclosures Act 1994* (***the principal Act***):

- (a) to include the Information Commissioner on the Public Interest Disclosures Steering Committee, and
- (b) to require each public authority to provide quarterly data to the Ombudsman on the authority's compliance with the principal Act, and
- (c) to require each public authority's public interest disclosures policy to require that a person who makes a public interest disclosure to the authority is to be provided, within 45 days of the person having made the disclosure, with a copy of the policy and an acknowledgment of the receipt of the disclosure, and
- (d) to clarify the process for the referral of evidence of an alleged reprisal for a public interest disclosure to the Commissioner of Police, the Police Integrity Commission (***the PIC***), the Independent Commission Against Corruption (***the ICAC***), the Attorney General and the Director of Public Prosecutions, and
- (e) to expand the matters in respect of which public interest disclosures may be made to the local government investigating authority, and

- (f) to make provision for the involvement of the Ombudsman in resolving disputes arising from a public interest disclosure having been made by a public official, and
- (g) to clarify the responsibilities of the head of a public authority.

## 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 (except for Schedule 1 [5]) on a day or days to be appointed by proclamation. Schedule 1 [5] commences on 1 January 2012.

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

**Schedule 1 [2]** replaces the term “protected disclosure” with the term “public interest disclosure”. **Schedule 1 [6], [9] and [12]** make consequential amendments.

**Schedule 1 [4]** expands the membership of the Public Interest Disclosures Steering Committee to include the Information Commissioner.

**Schedule 1 [5]** requires each public authority to prepare quarterly reports for the Ombudsman containing information on the authority’s compliance with its obligations under the principal Act in addition to the annual reports that are currently required to be prepared for tabling in Parliament.

**Schedule 1 [7]** provides that a public authority’s policy for receiving, assessing and dealing with public interest disclosures must ensure that a person who makes a public interest disclosure receives, within 45 days of the person having made the disclosure, a copy of the policy and a written acknowledgment of receipt of the disclosure.

**Schedule 1 [8]** provides that the head of a public authority must ensure that the authority has a public interest disclosures policy, that the policy designates at least one officer of the authority as being responsible for receiving public interest disclosures on behalf of the authority, that the staff of the authority are aware of the contents of the policy and the protections under the principal Act and that the authority complies with the policy and the authority’s obligations under the principal Act.

**Schedule 1 [11]** expands the matters in respect of which public interest disclosures may be made to the local government investigating authority in relation to local government. The new matters are allegations of corrupt conduct, maladministration, government information contraventions and local government pecuniary interest contraventions. Presently, public interest disclosures may be made to the local government investigating authority only in respect of serious and substantial waste of local government money. **Schedule 1 [1], [3], [10], [14] and [19]** make consequential amendments.

**Schedule 1 [13]** clarifies the process for the referral of evidence of an alleged reprisal for a public interest disclosure. **Schedule 1 [17]** makes a consequential amendment.

Public authorities (other than investigating authorities and the NSW Police Force) are to refer evidence of an offence to the Commissioner of Police or the ICAC (except for evidence relating to alleged offences by the NSW Police Force, which must be referred to the PIC).

Investigating authorities (other than the ICAC, the ICAC Inspector, the PIC and the PIC Inspector) must, after completing or discontinuing an investigation, refer evidence of an offence to the Commissioner of Police (except for evidence relating to alleged offences by the NSW Police Force, which must be referred to the PIC).

The NSW Police Force, the ICAC, the ICAC Inspector, the PIC and the PIC Inspector must, after completing an investigation and forming the opinion that an offence has been committed, refer the matter, by providing a brief of evidence, to the Director of Public Prosecutions (except for alleged offences by the Director of Public Prosecutions, which must be referred to the Attorney General).

**Schedule 1 [15]** enables regulations to be made to confer functions on the Ombudsman relating to the resolution of disputes arising as a result of a public official making a public interest disclosure.

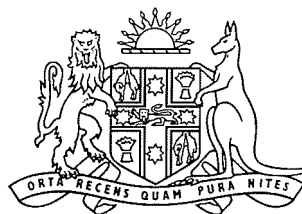
**Schedule 1 [16]** enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

**Schedule 1 [18]** is a transitional provision that makes it clear that the changes to the process for the referral of an alleged reprisal for a public interest disclosure do not apply in respect of a reprisal that is alleged to have occurred before the changes were made.

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

**Schedule 2** makes amendments to various Acts as a consequence of the replacement of the term “protected disclosure” with “public interest disclosure”.





New South Wales

# Public Interest Disclosures Amendment Bill 2011

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New South Wales

# Public Interest Disclosures Amendment Bill 2011

No. , 2011

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## A Bill for

An Act to amend the *Public Interest Disclosures Act 1994* to make further provision with respect to the grounds for public interest disclosures, the obligations and responsibilities of public authorities and heads of public authorities and the functions of the Ombudsman; and for other purposes.

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

**1    Name of Act**

This Act is the *Public Interest Disclosures Amendment Act 2011*.

**2    Commencement**

- (1)    Except as provided by subsection (2) this Act commences on a day or days to be appointed by proclamation.
- (2)    Schedule 1 [5] commences on 1 January 2012.



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

**[1]      Section 3 Object of Act**

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

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

**[2]      Section 4 Definitions**

Omit the definition of *protected disclosure* from section 4 (1).

Insert in alphabetical order:

*public interest disclosure* means a disclosure satisfying the applicable requirements of Part 2.

**[3]      Section 4 (1)**

Insert in alphabetical order:

*local government pecuniary interest contravention* means the breach of an obligation imposed by the *Local Government Act 1993* in connection with a pecuniary interest.

**[4]      Section 6A Steering Committee**

Insert after section 6A (1) (g):

(g1)    the Information Commissioner,

**[5]      Section 6CA**

Insert after section 6C (as inserted by the *Protected Disclosures Amendment (Public Interest Disclosures) Act 2010*):

**6CA      Reports to Ombudsman by public authorities**

(1)    Each public authority must, within 30 days after the end of each quarter or such later time as the Ombudsman may approve, provide to the Ombudsman statistical information on the public authority’s compliance with its obligations under this Act during the quarter.

(2)    The regulations may make provision for or with respect to:

(a)    the statistical information that is to be provided, and

(b)    the form in which the information is to be provided.

(3)	In this section, <i>quarter</i> means a quarter ending on the last day of September, December, March and June in each year.	1 2
<b>[6]</b>	<b>Sections 6D (1) and (2), 21 (3), 22 (2) and 32 (2) (b)</b>	3
	Omit “protected disclosures” wherever occurring.	4
	Insert instead “public interest disclosures”.	5
<b>[7]</b>	<b>Section 6D Public interest disclosures policies and guidelines</b>	6
	Insert after section 6D (1) (as inserted by the <i>Protected Disclosures Amendment (Public Interest Disclosures) Act 2010</i> ):	7 8
	(1A) Such a policy must provide that a copy of the policy and an acknowledgment, in writing, of the receipt of the disclosure is to be provided to a person who makes a public interest disclosure, within 45 days after the person makes the disclosure.	9 10 11 12
<b>[8]</b>	<b>Section 6E</b>	13
	Insert after section 6D (as inserted by the <i>Protected Disclosures Amendment (Public Interest Disclosures) Act 2010</i> ):	14 15
<b>6E</b>	<b>Responsibility of head of public authority</b>	16
(1)	The head of a public authority is responsible for ensuring that:	17
(a)	the public authority has the policy required by section 6D, and	18 19
(b)	the staff of the public authority are aware of the contents of the policy and the protections under this Act for a person who makes a public interest disclosure, and	20 21 22
(c)	the public authority complies with the policy and the authority’s obligations under this Act, and	23 24
(d)	the policy designates at least one officer of the public authority (who may be the principal officer) as being responsible for receiving public interest disclosures on behalf of the authority.	25 26 27 28

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	(2) In this section, <i>head of a public authority</i> means:	1
	(a) for a local government authority—the General Manager of the authority, or	2
		3
	(b) for the Department of the Legislative Assembly—the Speaker of the Legislative Assembly, or	4
		5
	(c) for the Department of the Legislative Council—the President of the Legislative Council, or	6
		7
	(d) for the Department of Parliamentary Services—the Speaker of the Legislative Assembly and the President of the Legislative Council, or	8
		9
		10
	(e) for a Division of the Government Service—the Division Head in relation to the Division, or	11
		12
	(f) a person who is prescribed by the regulations as the head of a public authority for the purposes of this section, or	13
		14
	(g) for any other public authority—the chief executive officer or other principal officer of the authority.	15
		16
[9]	<b>Part 2, heading</b>	17
	Omit the heading to the Part. Insert instead:	18
	<b>Part 2 Public interest disclosures</b>	19
[10]	<b>Section 9 Disclosures must be made voluntarily</b>	20
	Omit “corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention” from section 9 (3).	21
		22
	Insert instead “corrupt conduct, maladministration, serious and substantial waste of public money, government information contravention or local government pecuniary interest contravention”.	23
		24
		25
[11]	<b>Section 12B Disclosure concerning local government</b>	26
	Omit “serious and substantial waste of local government money” from section 12B (1) (b).	27
		28
	Insert instead “corrupt conduct, maladministration, serious and substantial waste of local government money, government information contravention or local government pecuniary interest contravention”.	29
		30
		31
[12]	<b>Sections 15 (1) and (2), 18, 20 (1), (1A), (1B) and (1C), 20A (1) and (2), 21 (1) and (3), 22, 25 (8) and 26 (3) and Schedule 2, clauses 11 (2) and 14</b>	32
		33
	Omit “protected disclosure” wherever occurring.	34
	Insert instead “public interest disclosure”.	35

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

Omit section 20 (4) (as inserted by the *Protected Disclosures Amendment (Public Interest Disclosures) Act 2010*).

Insert instead:

- (4) A public authority (other than an investigating authority and the NSW Police Force) must refer any evidence of an offence under this section to the Commissioner of Police or the Commission. Evidence of an offence that relates to the NSW Police Force must instead be referred to the PIC.
- (5) An investigating authority (other than the Commission, the ICAC Inspector, the PIC and the PIC Inspector) must, after completing or discontinuing an investigation into an alleged offence under this section, refer any evidence of the offence to the Commissioner of Police. Evidence of an offence that relates to the NSW Police Force must instead be referred to the PIC.
- (6) The NSW Police Force, the Commission, the ICAC Inspector, the PIC or the PIC Inspector must, after completing an investigation into an alleged offence under this section and forming the opinion that an offence has been committed, refer the alleged offence:
  - (a) to the Director of Public Prosecutions, by providing the Director of Public Prosecutions with a brief of evidence relating to the offence, or
  - (b) if the alleged offence relates to the Director of Public Prosecutions, to the Attorney General, by providing the Attorney General with a brief of evidence relating to the offence.

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

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

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

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<b>[15] Section 26B</b>	1
Insert after section 26A:	2
<b>26B Ombudsman's role in resolution of disputes</b>	3
The regulations may make provision for or with respect to the	4
conferring of functions on the Ombudsman in connection with	5
the resolution of disputes arising as a result of a public official	6
making a public interest disclosure.	7
<b>[16] Schedule 2 Savings, transitional and other provisions</b>	8
Insert at the end of clause 1 (1):	9
<i>Public Interest Disclosures Amendment Act 2011</i>	10
<b>[17] Schedule 2, clause 11 (3)</b>	11
Omit the clause.	12
<b>[18] Schedule 2</b>	13
Insert at the end of the Schedule:	14
<b>Part 4 Provisions consequent on enactment of</b>	15
<b>Public Interest Disclosures Amendment</b>	16
<b>Act 2011</b>	17
<b>17 Evidence of reprisals</b>	18
A provision of section 20 inserted by the <i>Public Interest</i>	19
<i>Disclosures Amendment Act 2011</i> does not apply in respect of an	20
offence alleged to have been committed before the	21
commencement of the provision.	22
<b>[19] Long title</b>	23
Omit "waste and government information contravention".	24
Insert instead "waste, government information contravention and local	25
government pecuniary interest contravention".	26

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<b>Schedule 2      Amendment of other Acts</b>	1
<b>2.1    Education (School Administrative and Support Staff) Act 1987 No 240</b>	2
	3
<b>Section 29 Meaning of “misconduct”</b>	4
Omit “protected disclosure” from section 29 (1) (c).	5
Insert instead “public interest disclosure”.	6
<b>2.2    Health Records and Information Privacy Act 2002 No 71</b>	7
<b>Section 5 Definition of “personal information”</b>	8
Omit “protected disclosure” from section 5 (3) (h) wherever occurring.	9
Insert instead “public interest disclosure”.	10
<b>2.3    Industrial Relations Act 1996 No 17</b>	11
<b>[1]    Section 98 Right of appeal</b>	12
Omit “protected disclosure” from section 98 (2).	13
Insert instead “public interest disclosure”.	14
<b>[2]    Section 98 (2)</b>	15
Omit “ <i>Protected Disclosures Act 1994</i> ”.	16
Insert instead “ <i>Public Interest Disclosures Act 1994</i> ”.	17
<b>2.4    Ombudsman Act 1974 No 68</b>	18
<b>Schedule 1 Excluded conduct of public authorities</b>	19
Omit “protected disclosure” from clause 12 (c).	20
Insert instead “public interest disclosure”.	21
<b>2.5    Police Act 1990 No 47</b>	22
<b>Section 206 Protection against reprisals</b>	23
Omit “protected disclosure” from section 206 (2B).	24
Insert instead “public interest disclosure”.	25

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<b>2.6 Privacy and Personal Information Protection Act 1998</b>	1
<b>No 133</b>	2
<b>Section 4 Definition of “personal information”</b>	3
Omit “protected disclosure” from section 4 (3) (e) wherever occurring.	4
Insert instead “public interest disclosure”.	5
<b>2.7 Public Sector Employment and Management Act 2002 No 43</b>	6
<b>Section 43 Meaning of “misconduct”</b>	7
Omit “protected disclosure” from section 43 (1) (c).	8
Insert instead “public interest disclosure”.	9
<b>2.8 Teaching Service Act 1980 No 23</b>	10
<b>Section 93C meaning of “misconduct”</b>	11
Omit “protected disclosure” from section 93C (1) (c).	12
Insert instead “public interest disclosure”.	13
<b>2.9 Technical and Further Education Commission Act 1990</b>	14
<b>No 118</b>	15
<b>Section 22E Meaning of “misconduct”</b>	16
Omit “protected disclosure” from section 22E (1) (c).	17
Insert instead “public interest disclosure”.	18