

**Supplementary
Submission
No 4a**

REVIEW OF THE PUBLIC INTEREST DISCLOSURES ACT 1994

Organisation: Information and Privacy Commission
Name: Ms Samara Dobbins
Position: Acting Information Commissioner
Date Received: 28 September 2016



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Our reference: Container 16/1617/DJ
Document D16/098862/DJ

Your ref: LAC16/193

Mr Lee Evans, MP
Chair
Committee on the Ombudsman, the Police Integrity Commission and
the Crime Commission
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email: ombopic@parliament.nsw.gov.au

Dear Mr Evans

Supplementary submission: Review of the *Public Interest Disclosures Act 1994* (PID Act)

I would like to take the opportunity to assist the Committee on one matter that arose during my appearance before the Committee at the public hearing held on Tuesday, 27 September 2016, for the above mentioned inquiry.

As detailed in my evidence, complaints by former public officials and members of the public in relation to government information contraventions can be made to the Information Commissioner under the *Government Information (Information Commissioner) Act 2009* (GIIC Act). While section 20 of the PID Act provides for the protection of a public official from detrimental action taken substantially in reprisal for the making of a public interest disclosure, recognising the unique features of the public sector employment relationship, former public officials and members of the public are currently afforded protections in broader statutory complaints arrangements.

In respect of statutory complaints arrangements for government information contraventions, I would like to draw the Committee's attention to the provisions in section 43 of the GIIC Act that provide for the protection of persons from disadvantage, including in some circumstance from dismissal from employment, for making a complaint or for assisting the Information Commissioner in dealing with a complaint. I enclose a copy of section 43 of the GIIC Act for your information.

The Committee may wish to consider recommending that the Information and Privacy Commission consider publishing and promoting enhanced guidance for the public and regulated agencies on the protections available to complainants under the GIIC Act, to complement the recently published guidance on public interest disclosures.

I trust that these comments are of assistance to the Committee. I have also enclosed a copy of my opening statement for the Committee's information.

Please do not hesitate to contact me in respect of any further assistance that could be provided.

Yours sincerely

[REDACTED]

28/9/16

Samara Dobbins
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Government Information (Information Commissioner) Act 2009 No 53

Current version for 15 July 2015 to date (accessed 28 September 2016 at 12:51)

Part 5 Section 43

43 Offences

(1) A person must not:

- (a) without lawful excuse, wilfully obstruct, hinder or resist the Commissioner or a member of staff of the Commissioner in the exercise of functions under this or any other Act, or
- (b) without lawful excuse, refuse or wilfully fail to comply with any lawful requirement of the Commissioner under this or any other Act, or
- (c) wilfully make any false statement to or mislead, or attempt to mislead, the Commissioner or a member of staff of the Commissioner in the exercise of functions under this or any other Act.

Maximum penalty: 10 penalty units.

(2) A person must not directly or indirectly:

- (a) falsely represent that he or she is the Commissioner or acting Commissioner, or
- (b) falsely represent that he or she is a member of staff of the Commissioner.

Maximum penalty: 10 penalty units.

(3) For the purposes of subsection (2), a person represents that a state of affairs exists if the person does or says anything, or causes, permits or suffers anything to be done or said, whereby it is represented, or whereby a belief may be induced, that the state of affairs exists.

(4) A person who uses, causes, inflicts or procures any violence, punishment, damage, loss or disadvantage to any person for or on account of:

- (a) his or her making a complaint to the Commissioner, or
- (b) his or her assisting the Commissioner, or
- (c) any evidence given by him or her to the Commissioner,

is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(5) An employer who dismisses any employee from his or her employment, or prejudices any employee in his or her employment, for or on account of the employee assisting the Commissioner is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(6) In any proceedings for an offence against subsection (5), it lies on the employer to prove that any employee shown to have been dismissed or prejudiced in his or her employment was so dismissed or prejudiced for some reason other than the reasons mentioned in subsection (5).

(7) In this section, a reference to a person assisting the Commissioner is a reference to a person who:

- (a) has appeared, is appearing or is to appear as a witness before the Commissioner, or
- (b) has complied with or proposes to comply with a requirement under section 25 (Agencies to give information etc), or
- (c) has assisted, is assisting or is to assist the Commissioner in some other manner.