



New South Wales

Public Interest Disclosures Amendment Act 2011 No 37

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New South Wales

Public Interest Disclosures Amendment Act 2011 No 37

Act No 37, 2011

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. [Assented to 13 September 2011]

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.

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 provide a report under this section to the Ombudsman for each 6 month period.
- (2) The report is to provide statistical information on the public authority’s compliance with its obligations under this Act during the 6 month period to which the report relates.
- (3) The report is to be provided to the Ombudsman within 30 days after the end of the 6 month period to which the report relates, or by such later time as the Ombudsman may approve.

- (4) The regulations may make provision for or with respect to:
 - (a) the statistical information that is to be provided in a report under this section, and
 - (b) the form in which such a report is to be provided.
- (5) In this section, **6 month period** means the period of 6 months ending on 30 June and 31 December in any year.

[6] Sections 6D (1) and (2), 21 (3), 22 (2) and 32 (2) (b)

Omit “protected disclosures” wherever occurring.

Insert instead “public interest disclosures”.

[7] Section 6D Public interest disclosures policies and guidelines

Insert after section 6D (1) (as inserted by the *Protected Disclosures Amendment (Public Interest Disclosures) Act 2010*):

- (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.

[8] Section 6E

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

6E Responsibility of head of public authority

- (1) The head of a public authority is responsible for ensuring that:
 - (a) the public authority has the policy required by section 6D, and
 - (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
 - (c) the public authority complies with the policy and the authority’s obligations under this Act, and
 - (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.
- (2) In this section, **head of a public authority** means:
 - (a) for a local government authority—the General Manager of the authority, or

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- (b) for the Department of the Legislative Assembly—the Speaker of the Legislative Assembly, or
 - (c) for the Department of the Legislative Council—the President of the Legislative Council, or
 - (d) for the Department of Parliamentary Services—the Speaker of the Legislative Assembly and the President of the Legislative Council, or
 - (e) for a Division of the Government Service—the Division Head in relation to the Division, or
 - (f) a person who is prescribed by the regulations as the head of a public authority for the purposes of this section, or
 - (g) for any other public authority—the chief executive officer or other principal officer of the authority.

[9] Part 2, heading

Omit the heading to the Part. Insert instead:

Part 2 Public interest disclosures

[10] Section 9 Disclosures must be made voluntarily

Omit “corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention” from section 9 (3).

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

[11] Section 12B Disclosure concerning local government

Omit “serious and substantial waste of local government money” from section 12B (1) (b).

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

[12] 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

Omit “protected disclosure” wherever occurring.

Insert instead “public interest disclosure”.

[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”.

[15] Section 26B

Insert after section 26A:

26B Ombudsman's role in resolution of disputes

The regulations may make provision for or with respect to the conferring of functions on the Ombudsman in connection with the resolution of disputes arising as a result of a public official making a public interest disclosure.

[16] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Public Interest Disclosures Amendment Act 2011

[17] Schedule 2, clause 11 (3)

Omit the clause.

[18] Schedule 2

Insert at the end of the Schedule:

**Part 4 Provisions consequent on enactment of
Public Interest Disclosures Amendment
Act 2011**

17 Evidence of reprisals

A provision of section 20 inserted by the *Public Interest Disclosures Amendment Act 2011* does not apply in respect of an offence alleged to have been committed before the commencement of the provision.

[19] Long title

Omit "waste and government information contravention".

Insert instead "waste, government information contravention and local government pecuniary interest contravention".

Schedule 2 Amendment of other Acts

2.1 Education (School Administrative and Support Staff) Act 1987 No 240

Section 29 Meaning of “misconduct”

Omit “protected disclosure” from section 29 (1) (c).

Insert instead “public interest disclosure”.

2.2 Health Records and Information Privacy Act 2002 No 71

Section 5 Definition of “personal information”

Omit “protected disclosure” from section 5 (3) (h) wherever occurring.

Insert instead “public interest disclosure”.

2.3 Industrial Relations Act 1996 No 17

[1] Section 98 Right of appeal

Omit “protected disclosure” from section 98 (2).

Insert instead “public interest disclosure”.

[2] Section 98 (2)

Omit “*Protected Disclosures Act 1994*”.

Insert instead “*Public Interest Disclosures Act 1994*”.

2.4 Ombudsman Act 1974 No 68

Schedule 1 Excluded conduct of public authorities

Omit “protected disclosure” from clause 12 (c).

Insert instead “public interest disclosure”.

2.5 Police Act 1990 No 47

Section 206 Protection against reprisals

Omit “protected disclosure” from section 206 (2B).

Insert instead “public interest disclosure”.

**2.6 Privacy and Personal Information Protection Act 1998
No 133**

Section 4 Definition of “personal information”

Omit “protected disclosure” from section 4 (3) (e) wherever occurring.

Insert instead “public interest disclosure”.

2.7 Public Sector Employment and Management Act 2002 No 43

Section 43 Meaning of “misconduct”

Omit “protected disclosure” from section 43 (1) (c).

Insert instead “public interest disclosure”.

2.8 Teaching Service Act 1980 No 23

Section 93C meaning of “misconduct”

Omit “protected disclosure” from section 93C (1) (c).

Insert instead “public interest disclosure”.

**2.9 Technical and Further Education Commission Act 1990
No 118**

Section 22E Meaning of “misconduct”

Omit “protected disclosure” from section 22E (1) (c).

Insert instead “public interest disclosure”.

[Agreement in principle speech made in Legislative Assembly on 21 June 2011

Second reading speech made in Legislative Council on 7 September 2011]

BY AUTHORITY