



New South Wales

# Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010

## 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 *Protected Disclosures Act 1994* (the **principal Act**) to implement recommendations of the report by the Joint Committee on the Independent Commission Against Corruption entitled *Protection of public sector whistleblower employees* published in November 2009.

The Bill amends the principal Act as follows:

- (a) to provide that persons engaged under contract to provide services to or on behalf of a public authority are public officials for the purposes of the principal Act,
- (b) to provide that a disclosure is protected if the person making the disclosure honestly believes, on reasonable grounds, that the disclosure shows or tends to show that a public authority or another public official has engaged, is engaged or proposes to engage in corrupt conduct, maladministration, serious and substantial waste of public money or a contravention of government information laws,

- (c) to further protect persons making protected disclosures by:
  - (i) increasing the penalty for the offence of taking detrimental action in reprisal against a person who made a protected disclosure, and
  - (ii) making a person who takes such action liable in damages for any loss suffered by the person who made the disclosure, and
  - (iii) enabling the Supreme Court to grant injunctions restraining a person from engaging in such action,
- (d) to establish the Public Interest Disclosures Steering Committee (the *Steering Committee*) which will be chaired by the Ombudsman and provide advice to the Minister on the operation of and recommendations for reform of the principal Act and on oversight and special reports of the Ombudsman,
- (e) to confer functions on the Ombudsman in relation to the operation of the principal Act, including promoting public awareness of the principal Act, assisting agencies and monitoring and auditing compliance with the principal Act,
- (f) to require public authorities to have a policy relating to procedures for dealing with protected disclosures and to prepare annual reports about their obligations under the principal Act to be tabled in Parliament,
- (g) to repeal a provision that removes protection for disclosures considered to be frivolous or vexatious,
- (h) to limit protection for a disclosure that is misdirected to the wrong investigating authority by requiring that the disclosure must have been made in the honest belief that the investigating authority was the appropriate body to deal with the matter, and to extend that protection to cover cases where the disclosure is not referred on to another investigating authority because the original investigating authority has power to investigate the matter,
- (i) to provide that taking detrimental action in reprisal against a person who made a protected disclosure constitutes misconduct for disciplinary action purposes,
- (j) to create a further exception to the requirement that authorities keep the identity of a person who has made a protected disclosure confidential so that the requirement will not apply if the person's identity has become public because the person has voluntarily identified himself or herself, and to require public authorities to establish procedures that will extend the requirement for confidentiality to the person who makes the protected disclosure,
- (k) to require an investigating authority or public authority that has evidence of an offence of taking detrimental action against a person for making a protected disclosure to refer the evidence to the DPP (or to the Attorney General if the offence involves conduct of the DPP),
- (l) to require consultation with the Steering Committee on any proposed regulation to be made under the principal Act,

- (m) to require public authorities to provide an annual report on their obligations under the principal Act and to require those reports to be tabled in Parliament,
- (n) to enable the Ombudsman to make a special report to Parliament on matters arising under the principal Act,
- (o) to replace the existing requirement for biennial review of the principal Act with a requirement for a review in 5 years and to broaden the scope of the review,
- (p) to make other miscellaneous amendments and saving and transitional provisions.

## 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 on a day or days to be appointed by proclamation.

## **Schedule 1      Amendment of Protected Disclosures Act 1994 No 92**

### **Protected disclosures**

**Schedule 1 [18]** amends provisions that limit protected disclosures to disclosures that reveal corrupt conduct, maladministration or serious and substantial waste of public money so that a disclosure will be protected when the person making the disclosure honestly believes, on reasonable grounds, that the disclosure reveals corrupt conduct, maladministration or serious and substantial waste of public money. The amendment also reflects the recent addition of government information contravention (a failure to exercise functions in accordance with the *Government Information (Public Access) Act 2009*) as a ground for a protected disclosure. The amendments made by **Schedule 1 [2], [4], [14], [16], [20], [21], [22], [32], [34] and [42]** are consequential on government information contravention being grounds for a protected disclosure.

**Schedule 1 [17]** provides that for the purposes of determining whether a disclosure is a protected disclosure, an assertion by a public official about what the public official believes in connection with a disclosure is evidence of the belief asserted and that the belief is an honest belief.

### **Public officials and public authorities**

For a disclosure to be protected by the principal Act, it must be made by a public official to an investigating authority, an officer of a public authority, a member of Parliament or a journalist. Protected disclosures may be made about conduct by public authorities and public officials. **Schedule 1 [12]** extends the definition of **public official** to include a person who is engaged under contract to provide services to or on behalf of a public authority. The amendment also provides that members of

Parliament and persons employed by the President of the Legislative Council or the Speaker of the Legislative Assembly are public officials. **Schedule 1 [8]** is a consequential amendment. **Schedule 1 [7]** clarifies the definition of *public authority*.

**Schedule 1 [15]** provides that a disclosure by a public official may be made to the Clerk of the Legislative Assembly, the Clerk of the Parliaments or the Executive Manager of the Department of Parliamentary Services if the disclosure concerns the conduct of a member of Parliament and is made in accordance with official established procedures. **Schedule 1 [23]** provides that for such a disclosure to be protected it must be a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by a member of Parliament.

**Schedule 1 [36]** establishes a transitional arrangement that enables disclosures to continue to be made to the principal officer of a public authority that becomes a separate office within another public authority (rather than to the principal officer of that other public authority). This transitional arrangement continues until a new procedure is established for, or an existing procedure is amended or confirmed to apply to, the making of protected disclosures by officers of that separate office.

### **Protection against reprisals**

**Schedule 1 [26]** increases the penalty for the offence of taking detrimental action against a person in reprisal for the person making a protected disclosure from 50 penalty units or 12 months imprisonment (or both) to 100 penalty units or 2 years imprisonment (or both). **Schedule 1 [27]** provides that a public official who commits such an offence is guilty of engaging in misconduct and that the misconduct justifies disciplinary action being taken against the public official. **Schedule 1 [27]** also makes it clear that the section covers reprisal action taken on the basis of a belief or suspicion that a protected disclosure has been made or may have been made even if the disclosure was not made. **Schedule 1 [28]** requires an investigating authority or public authority to refer any evidence of such an offence to the Director of Public Prosecutions or to the Attorney General if the evidence relates to conduct of the Director of Public Prosecutions.

**Schedule 1 [29]** (proposed section 20A) provides that a person who takes detrimental action against a person in reprisal for the other person making a protected disclosure is liable in damages (other than exemplary, punitive or aggravated damages) for any loss that the other person suffers as a result of the detrimental action. The section also covers reprisal action taken on the basis of a belief or suspicion that a protected disclosure has been made or may have been made even if the disclosure was not made.

**Schedule 1 [29]** (proposed section 20B) enables an investigating authority and, with the approval of the Attorney General, a public authority to apply to the Supreme Court for an injunction to prevent a person from taking detrimental action against another person that is in reprisal for the other person making a protected disclosure.

The Court may grant an injunction restraining the person from engaging in such conduct and may also require the person to take action to remedy the detriment.

### **Misdirected disclosures**

**Schedule 1 [24]** amends an existing provision that protects a disclosure when it is misdirected to the wrong investigating authority and then referred on to the appropriate investigating authority, public official or public authority. The amendment limits protection to cases where the disclosure is made in the honest belief that the investigating authority to which the disclosure was made was the appropriate body to deal with the matter. The amendment also extends the protection to cases where the misdirected disclosure is made in the honest belief that the investigating authority was the appropriate body to deal with the matter and the disclosure is not referred on because the investigating authority has power to investigate the matter. **Schedule 1 [33] and [35]** make it clear that the referral of a protected disclosure under the existing provisions for the referral of disclosures does not affect the protected status of the disclosure.

### **Confidentiality**

**Schedule 1 [30]** creates a further exception to the prohibition against the disclosure of information revealing the identity of a person who has made a protected disclosure, so that the prohibition will not apply if the information is generally available as a result of the person who made the protected disclosure voluntarily identifying himself or herself as having made the protected disclosure. **Schedule 1 [31]** requires a public authority to establish procedures for ensuring that public officials of the authority maintain confidentiality in connection with protected disclosures made by those public officials.

### **Public Interest Disclosures Steering Committee**

**Schedule 1 [13]** (proposed section 6A) establishes the Public Interest Disclosures Steering Committee. The Steering Committee is to provide advice to the Minister on the operation of the principal Act and suggestions for reform and to receive, consider and provide advice to the Minister on reports by the Ombudsman under the principal Act.

The Steering Committee is to consist of the following members:

- (a) the Ombudsman (who will chair the Committee),
- (b) the Director-General of the Department of Premier and Cabinet,
- (c) the Auditor-General,
- (d) the Commissioner for the Independent Commission Against Corruption,
- (e) the Commissioner for the Police Integrity Commission,
- (f) the Director-General under the *Local Government Act 1993*,
- (g) the Commissioner of Police,
- (h) such other members as are prescribed by the regulations.

**Schedule 1 [37]** requires the Minister to consult with the Steering Committee about a proposed regulation under the principal Act before the Minister recommends the making of the regulation. **Schedule 1 [38]** (proposed section 31B) requires the Steering Committee to review any Commonwealth legislation enacted in response to the 2009 report *Whistleblower protection: A comprehensive scheme for the Commonwealth public sector* of the House of Representatives Standing Committee on Legal and Constitutional Affairs. **Schedule 1 [10]** is a consequential amendment.

### **Functions of Ombudsman**

**Schedule 1 [13]** (proposed section 6B) confers functions on the Ombudsman in connection with the operation of the principal Act, including the following:

- (a) to promote public awareness and understanding of the principal Act,
- (b) to provide information and assistance to public authorities, investigating authorities and public officials on any matters relevant to the principal Act (including by issuing guidelines and publications),
- (c) to monitor, audit and report on the exercise by public authorities of functions under, and compliance with, the principal Act,
- (d) to make reports and provide recommendations to the Minister about proposals for legislative and administrative changes to further the object of the principal Act.

**Schedule 1 [13]** (proposed section 6C) gives the Ombudsman power to require the provision of information and documents by public authorities for the purposes of an audit under proposed section 6B.

**Schedule 1 [38]** (proposed section 31A) enables the Ombudsman to make a special report under the *Ombudsman Act 1974* on any matter arising in connection with the exercise of the Ombudsman's functions under the principal Act, including systemic or other problems identified with the operation of the principal Act and proposals for legislative change.

### **Public authorities to have protected disclosure policy and to prepare annual reports**

**Schedule 1 [13]** (proposed section 6D) requires all public authorities to have a policy that provides for procedures for receiving, assessing and dealing with protected disclosures. A public authority must have regard to any guidelines adopted by the Ombudsman in formulating such a policy.

**Schedule 1 [38]** (proposed section 31) requires each public authority to prepare an annual report on the authority's obligations under the principal Act that will be tabled in Parliament. The report is to be submitted to the Minister responsible for the public authority and a copy is to be given to the Ombudsman.

### **Review of principal Act**

**Schedule 1 [39]** amends the requirements relating to reviews of the principal Act so that a review of the principal Act by a joint committee of members of Parliament will

be required to be undertaken after 5 years from the date of assent to the proposed Act, and not every 2 years as is currently the case. The review will be required to consider the effectiveness of the amendments made by the proposed Act, whether the structures in place to support the operation and future direction of the protected disclosures scheme remain appropriate and the need for further review of the principal Act. The joint committee conducting the review is to consult with the members of the Steering Committee, who may assist and advise on the review.

### **Name of Act**

**Schedule 1 [1]** changes the name of the principal Act to the *Public Interest Disclosures Act 1994*.

### **Other amendments**

**Schedule 1 [25]** repeals a provision that operated to remove protection for a disclosure when an investigating authority or public authority declined or discontinued investigation of the disclosure on the basis that it was frivolous or vexatious.

**Schedule 1 [5], [6], [9] and [19]** replace references to the Director-General of the Department of Local Government with a reference to the Director-General under section 429A of the *Local Government Act 1993* (to be known in the principal Act as a *local government investigating authority*) as a consequence of recent departmental amalgamations.

**Schedule 1 [3]** omits an obsolete definition.

**Schedule 1 [11]** makes a consequential amendment.

### **Savings and transitional provisions**

**Schedule 1 [40]** enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

**Schedule 1 [41]** inserts savings and transitional provisions.

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

**Schedule 2** amends other Acts as a consequence of the proposed change of name of the principal Act.



First print



New South Wales

# Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010

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New South Wales

# Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010

No. , 2010

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## A Bill for

An Act to amend the *Protected Disclosures Act 1994* to make further provision for protecting public officials who make disclosures to which the Act applies; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Protected Disclosures Amendment (Public Interest Disclosures) Act 2010</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6

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<b>Schedule 1</b>	<b>Amendment of Protected Disclosures Act 1994 No 92</b>	1
		2
<b>[1]</b>	<b>Section 1 Name of Act</b>	3
	Omit “ <i>Protected Disclosures Act 1994</i> ”.	4
	Insert instead “ <i>Public Interest Disclosures Act 1994</i> ”.	5
<b>[2]</b>	<b>Section 3 Object of Act</b>	6
	Omit “corrupt conduct, maladministration and serious and substantial waste” from section 3 (1).	7
	Insert instead “corrupt conduct, maladministration, serious and substantial waste and government information contravention”.	9
		10
<b>[3]</b>	<b>Section 4 Definitions</b>	11
	Omit the definition of <i>disciplinary proceeding</i> .	12
<b>[4]</b>	<b>Section 4, definition of “government information contravention”</b>	13
	Insert in alphabetical order:	14
	<i>government information contravention</i> means conduct of a kind that constitutes a failure to exercise functions in accordance with any provision of the <i>Government Information (Public Access) Act 2009</i> .	15
		16
		17
		18
<b>[5]</b>	<b>Section 4, definition of “investigating authority”</b>	19
	Omit paragraph (f). Insert instead:	20
	(f) the local government investigating authority, or	21
<b>[6]</b>	<b>Section 4, definition of “local government investigating authority”</b>	22
	Insert in alphabetical order:	23
	<i>local government investigating authority</i> means the Director-General under section 429A (Complaints about councils, councillors, delegates and staff) of the <i>Local Government Act 1993</i> .	24
		25
		26
		27
<b>[7]</b>	<b>Section 4, definition of “public authority”</b>	28
	Omit the definition. Insert instead:	29
	<i>public authority</i> means any public authority whose conduct or activities may be investigated by an investigating authority, and includes (without limitation) each of the following:	30
		31
		32
	(a) a Division of the Government Service,	33

	(b) a State owned corporation and any subsidiary of a State owned corporation,	1
	(c) a local government authority,	2
	(d) the Police Force, PIC and PIC Inspector.	3
<b>[8]</b>	<b>Section 4, definition of “public official”</b>	4
	Omit the definition. Insert instead:	5
	<i>public official</i> —see section 4A.	6
<b>[9]</b>	<b>Section 4, definition of “relevant investigation Act”</b>	7
	Omit the definition. Insert instead:	8
	<i>relevant investigation Act</i> means:	9
	(a) in relation to an investigating authority other than the local government investigating authority—the Act that appoints or constitutes the investigating authority, and	10
	(b) in relation to the local government investigating authority—the <i>Local Government Act 1993</i> .	11
<b>[10]</b>	<b>Section 4, definition of “Steering Committee”</b>	12
	Insert in alphabetical order:	13
	<i>Steering Committee</i> means the Public Interest Disclosures Steering Committee established by section 6A.	14
<b>[11]</b>	<b>Section 4 (2)</b>	15
	Insert at the end of section 4:	16
	(2) Notes included in this Act do not form part of this Act.	17
<b>[12]</b>	<b>Section 4A</b>	18
	Insert after section 4:	19
	<b>4A Public officials</b>	20
	(1) In this Act, <i>public official</i> means an individual who is an employee of or otherwise in the service of a public authority, and includes (without limitation) each of the following:	21
	(a) a person employed under the <i>Public Sector Employment and Management Act 2002</i> ,	22
	(b) a member of Parliament,	23
	(c) a person employed by either or both of the President of the Legislative Council or the Speaker of the Legislative Assembly,	24

(d)	any other individual having public official functions or acting in a public official capacity whose conduct and activities may be investigated by an investigating authority,	1 2 3 4
(e)	an individual in the service of the Crown,	5
(f)	an individual who is engaged by a public authority under a contract to provide services to or on behalf of the public authority (referred to in this section as an <i>independent contractor</i> to the public authority).	6 7 8 9
(2)	An individual who is a public official because he or she is an independent contractor to the public authority is taken to belong to the public authority for the purposes of this Act.	10 11 12
<b>[13]</b>	<b>Sections 6A–6D</b>	13
	Insert after section 6:	14
	<b>6A Steering Committee</b>	15
(1)	There is established by this Act a Public Interest Disclosures Steering Committee consisting of the following members:	16 17
(a)	the Ombudsman, who is to be the chairperson of the Steering Committee,	18 19
(b)	the Director-General of the Department of Premier and Cabinet,	20 21
(c)	the Auditor-General,	22
(d)	the Commissioner for the Independent Commission Against Corruption,	23 24
(e)	the Commissioner for the PIC,	25
(f)	the local government investigating authority,	26
(g)	the Commissioner of Police,	27
(h)	such other members as may be prescribed by the regulations.	28 29
(2)	The functions of the Steering Committee are:	30
(a)	to provide advice to the Minister on the operation of this Act and recommendations for reform, and	31 32
(b)	to receive, consider and provide advice to the Minister on any reports provided by the Ombudsman in the exercise of functions under section 6B or as referred to in section 31A.	33 34 35
(3)	A member of the Steering Committee may appoint a nominee to act in the place of the member (either generally or for a particular	36 37

	purpose) and may revoke any such appointment. While acting in the place of a member, the member's nominee has all the functions of the member (including the functions of chairperson in the case of the Ombudsman's nominee) and is taken to be a member.	1 2 3 4 5
(4)	The quorum for a meeting of the Steering Committee is 3 members of the Committee of whom 2 must be the Ombudsman and the Director-General of the Department of Premier and Cabinet (or their nominees).	6 7 8 9
(5)	The Steering Committee is to determine its own procedures.	10
(6)	The Ombudsman (as chairperson of the Steering Committee) is to prepare an annual report of the Steering Committee's activities and any recommendations made to the Minister during the reporting period of 12 months ending on 30 June in each year.	11 12 13 14
(7)	The annual report is to be prepared and provided to the Minister as soon as practicable after the end of the reporting period and is to be tabled by the Minister in each House of Parliament as soon as practicable after the Minister receives it.	15 16 17 18
<b>6B</b>	<b>Oversight of Act by Ombudsman</b>	19
(1)	The Ombudsman has the following functions in connection with the operation of this Act:	20 21
(a)	to promote public awareness and understanding of this Act and to promote the object of this Act,	22 23
(b)	to provide information, advice, assistance and training to public authorities, investigating authorities and public officials on any matters relevant to this Act,	24 25 26
(c)	to issue guidelines and other publications for the assistance of public authorities and investigating authorities in connection with their functions under this Act,	27 28 29
(d)	to issue guidelines and other publications for the assistance of public officials in connection with the protections afforded to them under this Act,	30 31 32
(e)	to monitor and provide reports ( <i>monitoring reports</i> ) to Parliament on the exercise of functions under this Act and compliance with this Act by public authorities (other than investigating authorities),	33 34 35 36
(f)	to audit and provide reports ( <i>audit reports</i> ) to Parliament on the exercise of functions under this Act and compliance with this Act by public authorities (other than investigating authorities),	37 38 39 40

(g)	to provide reports and recommendations to the Minister about proposals for legislative and administrative changes to further the object of this Act.	1 2 3
	<b>Note.</b> The Ombudsman is also chairperson of the Steering Committee.	4
(2)	A monitoring report is to be provided once every 12 months. An audit report is to be provided whenever the Ombudsman considers it desirable to do so and at least once every 12 months.	5 6 7
(3)	The Ombudsman must, as soon as practicable after 30 June in each year, prepare and provide a report to Parliament on the Ombudsman's activities under this section for the preceding 12 months.	8 9 10 11
(4)	A report to Parliament under this section can be provided by being included in the Ombudsman's annual report under section 30 of the <i>Ombudsman Act 1974</i> or can be provided as a separate report and provided to the Presiding Officer of each House of Parliament.	12 13 14 15 16
(5)	Section 31AA of the <i>Ombudsman Act 1974</i> applies to a report to Parliament under this section as if the report were a report made or furnished under Part 4 of that Act.	17 18 19
<b>6C</b>	<b>Provision of information to Ombudsman for audit purposes</b>	20
(1)	For the purposes of an audit under section 6B, the Ombudsman may require the principal officer of or who constitutes a public authority:	21 22 23
(a)	to give the Ombudsman a statement of information, or	24
(b)	to produce to the Ombudsman any document or other thing under the person's control, or the production of which the person may, in an official capacity, reasonably require, or	25 26 27
(c)	to give the Ombudsman a copy of any such document.	28
(2)	A requirement under this section must be in writing, must specify or describe the information, document or thing required, and must fix a time and specify a place for compliance.	29 30 31
(3)	It is the duty of the principal officer of or who constitutes a public authority to comply with any requirement of the Ombudsman under this section.	32 33 34
(4)	A provision of any Act or law that prevents or restricts access to records or disclosure of information (other than section 22 of this Act) does not prevent a person from complying, or affect the person's duty to comply, with a requirement of the Ombudsman under this section.	35 36 37 38 39

(5)	Anything done by a person in compliance with a requirement of the Ombudsman under this section:	1
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(a)	does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and	3
		4
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(b)	does not give rise to any liability for defamation or other civil liability.	6
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<b>6D</b>	<b>Public interest disclosures policies and guidelines</b>	8
(1)	Each public authority must have a policy that provides for its procedures for receiving, assessing and dealing with protected disclosures.	9
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		11
(2)	The Ombudsman may adopt guidelines for the procedures of public authorities for receiving, assessing and dealing with protected disclosures. The guidelines may include a model policy that provides for those procedures.	12
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(3)	A public authority must have regard to (but is not bound by) the Ombudsman's guidelines in formulating a policy for the purposes of this section.	16
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<b>[14]</b>	<b>Section 8 Disclosures must be made by public officials</b>	19
	Omit "corrupt conduct, maladministration or serious and substantial waste of public money" from section 8 (1) (c).	20
		21
	Insert instead "corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention".	22
		23
<b>[15]</b>	<b>Section 8 (1) (c1)</b>	24
	Insert after section 8 (1) (c):	25
(c1)	to the Clerk of the Legislative Assembly, the Clerk of the Parliaments or the Executive Manager of the Department of Parliamentary Services, but only if the disclosure concerns the conduct of a member of Parliament and only if the disclosure is made in accordance with any official procedure established for the reporting of allegations of corrupt conduct, maladministration or serious and substantial waste of public money by a member of Parliament, or	26
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<b>[16] Section 9 Disclosures must be made voluntarily</b>	1
Omit “corrupt conduct, maladministration or serious and substantial waste of public money” from section 9 (3).	2 3
Insert instead “corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention”.	4 5
<b>[17] Section 9A</b>	6
Insert after section 9:	7
<b>9A Presumptions about beliefs on which disclosures are based</b>	8
(1) For the purposes of determining whether a disclosure by a public official is protected by this Act, an assertion by the public official as to what the public official believes in connection with the disclosure is, in the absence of evidence to the contrary, evidence of the belief asserted and that the belief is an honest belief.	9 10 11 12 13
(2) Such an assertion need not be express and can be inferred from the nature or content of the disclosure.	14 15
<b>[18] Sections 10, 11, 12, 12A, 12B, 12C, 13 and 14</b>	16
Omit “that shows or tends to show” wherever occurring.	17
Insert instead “that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show”.	18 19
<b>[19] Section 12B Disclosure concerning serious and substantial waste in local government</b>	20 21
Omit “Director-General of the Department of Local Government” from section 12B (1).	22 23
Insert instead “local government investigating authority”.	24
<b>[20] Section 12D Disclosure to Information Commissioner</b>	25
Omit section 12D (b). Insert instead:	26
(b) be disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show that a public authority or another public official has engaged, is engaged or proposes to engage in government information contravention.	27 28 29 30 31

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<b>[21] Section 14 Disclosures to public officials</b>	1
Omit “corrupt conduct, maladministration or serious and substantial waste of public money” from section 14 (1) and (2) wherever occurring.	2 3
Insert instead “corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention”.	4 5
<b>[22] Section 14 (2)</b>	6
Omit “corrupt conduct, maladministration or serious and substantial waste (whether”.	7 8
Insert instead “corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention (whether”.	9 10
<b>[23] Section 14 (2A)</b>	11
Insert after section 14 (2):	12
(2A) To be protected by this Act, a disclosure by a public official to the Clerk of the Legislative Assembly, the Clerk of the Parliaments or the Executive Manager of the Department of Parliamentary Services in accordance with any official procedure established for the reporting of allegations of corrupt conduct, maladministration or serious and substantial waste of public money by a member of Parliament must be a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show such corrupt conduct, maladministration or serious and substantial waste by a member of Parliament.	13 14 15 16 17 18 19 20 21 22 23
<b>[24] Section 15</b>	24
Omit the section. Insert instead:	25
<b>15 Protection of misdirected disclosures</b>	26
(1) A misdirected disclosure by a public official to an investigating authority that the public official honestly believed (at the time the disclosure was made) was the appropriate investigating authority to deal with the matter is a protected disclosure if:	27 28 29 30
(a) the investigating authority (whether because it is not authorised to investigate the matter under the relevant investigation Act or otherwise) refers the disclosure under Part 4 to another investigating authority or to a public official or public authority, or	31 32 33 34 35
(b) the investigating authority could have referred the disclosure under Part 4 but did not do so because it has	36 37

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	power to investigate the matter concerned under the relevant investigation Act.	1 2
	(2) A <i>misdirected disclosure</i> is a disclosure that is not a protected disclosure because it was not made to the appropriate investigating authority (but that would have been a protected disclosure had it been made to the appropriate investigating authority).	3 4 5 6 7
<b>[25]</b>	<b>Section 16 Disclosures made on frivolous or other grounds</b>	8
	Omit the section.	9
<b>[26]</b>	<b>Section 20 Protection against reprisals</b>	10
	Omit the penalty from section 20 (1). Insert instead:	11
	Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.	12 13
<b>[27]</b>	<b>Section 20 (1B) and (1C)</b>	14
	Insert after section 20 (1A):	15
	(1B) A public official who takes detrimental action against another person that is substantially in reprisal for the other person making a protected disclosure is guilty of engaging in conduct that constitutes misconduct in the performance of his or her duties as a public official and that justifies the taking of disciplinary action against the public official, including disciplinary action provided for:	16 17 18 19 20 21 22
	(a) by or under an Act that regulates the employment or service of the public official, or	23 24
	(b) by or under a contract of employment or contract for services that governs the employment or engagement of the public official.	25 26 27
	(1C) This section extends to a case where the person who takes the detrimental action does so because the person believes or suspects that the other person made or may have made a protected disclosure even if the other person did not in fact make a protected disclosure.	28 29 30 31 32
<b>[28]</b>	<b>Section 20 (4)</b>	33
	Insert after section 20 (3):	34
	(4) An investigating authority or public authority must refer any evidence of an offence under this section to the Director of Public	35 36

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	Prosecutions or (if the alleged offence relates to conduct of the Director of Public Prosecutions) the Attorney General.	1 2
<b>[29]</b>	<b>Sections 20A and 20B</b>	3
	Insert after section 20:	4
	<b>20A Compensation for reprisals</b>	5
	(1) A person who takes detrimental action against another person that is substantially in reprisal for the other person making a protected disclosure is liable in damages for any loss that the other person suffers as a result of that detrimental action.	6 7 8 9
	(2) This section extends to a case where the person who takes the detrimental action does so because the person believes or suspects that the other person made or may have made a protected disclosure even if the other person did not in fact make a protected disclosure.	10 11 12 13 14
	(3) Damages recoverable under this section do not include exemplary or punitive damages or damages in the nature of aggravated damages.	15 16 17
	(4) An entitlement to damages arising under this section does not constitute redress in relation to detrimental action comprising dismissal from employment, for the purposes of section 90 (Effect of availability of other remedies) of the <i>Industrial Relations Act 1996</i> or any other law.	18 19 20 21 22
	<b>20B Injunctions to prevent reprisals</b>	23
	(1) An investigating authority, or any other public authority with the approval of the Attorney General, may apply to the Supreme Court for an injunction to prevent a contravention of section 20 (Protection against reprisals).	24 25 26 27
	(2) The Supreme Court may, on application under this section, grant an injunction restraining a person from engaging in conduct in which the person has engaged, is engaged or is proposing to engage and that constituted, constitutes or would constitute a contravention of section 20, and, if in the opinion of the Supreme Court it is desirable to do so, requiring that person to do any act or thing to remedy such a contravention.	28 29 30 31 32 33 34
	(3) The Court may grant an interim injunction pending determination of an application under this section if the Court thinks it is desirable to do so.	35 36 37
	(4) The Court may discharge or vary an injunction granted under this section.	38 39

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(5)	The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:	1
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(a)	whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind, and	3
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(b)	whether or not the person has previously engaged in conduct of that kind, and	6
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(c)	whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.	8
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(6)	The Court must not require an applicant for an injunction under this section or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.	11
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<b>[30]</b>	<b>Section 22 Confidentiality guidelines</b>	14
	Omit section 22 (a). Insert instead:	15
(a)	the person consents in writing to the disclosure of that information, or it is generally known that the person has made the protected disclosure as a result of the person having voluntarily identified themselves (otherwise than by making the protected disclosure) as the person who made the protected disclosure, or	16
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<b>[31]</b>	<b>Section 22 (2)</b>	22
	Insert at the end of section 22:	23
(2)	As part of its procedures for receiving, assessing and dealing with protected disclosures, a public authority must establish procedures for ensuring that a public official who belongs to the public authority maintains confidentiality in connection with a protected disclosure made by the public official.	24
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	<b>Note.</b> These procedures are required to be the subject of a policy of the public authority under section 6D.	29
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<b>[32]</b>	<b>Section 25 Referral of disclosures by investigating authorities</b>	31
	Omit “corrupt conduct, maladministration or serious and substantial waste” from section 25 (1).	32
		33
	Insert instead “corrupt conduct, maladministration, serious and substantial waste or government information contravention”.	34
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<b>[33] Section 25 (8)</b>	1
Insert after section 25 (7):	2
(8) A protected disclosure that is referred under this section remains a protected disclosure after it is referred.	3 4
<b>[34] Section 26 Referral of disclosures by public officials</b>	5
Omit “corrupt conduct, maladministration or serious and substantial waste” from section 26 (1).	6 7
Insert instead “corrupt conduct, maladministration, serious and substantial waste or government information contravention”.	8 9
<b>[35] Section 26 (3)</b>	10
Insert after section 26 (2):	11
(3) A protected disclosure that is referred under this section remains a protected disclosure after it is referred.	12 13
<b>[36] Section 26A</b>	14
Insert after section 26:	15
<b>26A Transitional disclosure procedure when public authority becomes separate office within another public authority</b>	16 17
(1) If a public authority becomes a separate office within another public authority (the <i>new public authority</i> ), a disclosure made to the principal officer of the separate office during the transition period is taken to have been made to the principal officer of the new public authority.	18 19 20 21 22
(2) The <i>transition period</i> is the period beginning when the public authority becomes a separate office within the new public authority and ending when either of the following happens:	23 24 25
(a) a procedure is established by the new public authority that provides for the reporting of allegations of corrupt conduct, maladministration or serious and substantial waste of public money by officers of the separate office,	26 27 28 29
(b) an existing procedure of the new public authority is varied or confirmed to be applicable to the reporting of allegations of corrupt conduct, maladministration or serious and substantial waste of public money by officers of the separate office.	30 31 32 33 34
(3) A public authority can be the new public authority under this section even if the public authority is not newly created and even if it is formed by the amalgamation of 2 or more existing public	35 36 37

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	authorities that become separate offices of the new public authority.	1 2
<b>[37]</b>	<b>Section 30 Regulations</b>	3
	Insert at the end of the section:	4
	(2) The Minister must not recommend the making of a regulation under this Act unless the Minister certifies that the Minister has consulted with the Steering Committee concerning the making of the regulation.	5 6 7 8
<b>[38]</b>	<b>Sections 31–31B</b>	9
	Insert after section 30:	10
	<b>31 Reports to Parliament by public authorities</b>	11
	(1) Each public authority must, within 4 months after the end of each reporting year, prepare an annual report on the public authority's obligations under this Act for submission to the Minister responsible for the public authority. A copy of the report is to be provided to the Ombudsman.	12 13 14 15 16
	(2) An annual report under this section must be tabled in each House of Parliament by the relevant Minister as soon as practicable after it is prepared unless it is included in an annual report prepared for the purposes of the <i>Annual Reports (Departments) Act 1985</i> or the <i>Annual Reports (Statutory Bodies) Act 1984</i> .	17 18 19 20 21
	(3) The regulations may make provision for or with respect to:	22
	(a) the information to be included in annual reports, and	23
	(b) the form in which annual reports are to be prepared.	24
	(4) In this section, a reference to the reporting year of a public authority is a reference to:	25 26
	(a) the financial year of the public authority for the purposes of the <i>Annual Reports (Departments) Act 1985</i> or the <i>Annual Reports (Statutory Bodies) Act 1984</i> , or	27 28 29
	(b) if the public authority does not have a financial year for the purposes of either of those Acts, the year ending 30 June.	30 31
	<b>31A Special report by Ombudsman</b>	32
	(1) The power of the Ombudsman to make a special report under section 31 (Special report to Parliament) of the <i>Ombudsman Act 1974</i> extends to the making of a special report on any matter arising in connection with the discharge of the Ombudsman's functions under or in connection with the operation of this Act,	33 34 35 36 37

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	including systemic or other problems identified by the Ombudsman in connection with the operation of this Act.	1 2
(2)	A special report can include proposals for legislative change. <b>Note.</b> The requirements of the <i>Ombudsman Act 1974</i> apply in respect of a special report under section 31 of that Act on matters arising under this Act.	3 4 5 6
<b>31B</b>	<b>Review of Commonwealth legislation</b>	7
(1)	The Steering Committee is to review any legislation of the Commonwealth that is enacted in response to the 2009 report <i>Whistleblower protection: A comprehensive scheme for the Commonwealth public sector</i> of the House of Representatives Standing Committee on Legal and Constitutional Affairs.	8 9 10 11 12
(2)	The review is to be conducted within 6 months after the enactment of the Commonwealth legislation (or within 6 months after the commencement of this section if the Commonwealth legislation is enacted before the commencement of this section).	13 14 15 16
(3)	The Steering Committee is to provide the Minister with a report on the outcome of the review and any recommendations for reform of this Act arising from the review.	17 18 19
(4)	A copy of the Steering Committee's report is to be tabled in each House of Parliament as soon as practicable after the report is provided to the Minister.	20 21 22
<b>[39] Section 32</b>		23
	Omit the section. Insert instead:	24
<b>32</b>	<b>Review of Act</b>	25
(1)	A joint committee of members of Parliament is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	26 27 28 29
(2)	Without limiting subsection (1), the review is to consider:	30
(a)	the effectiveness of the amendments made by the <i>Protected Disclosures Amendment (Public Interest Disclosures) Act 2010</i> , in particular the amendments providing for the role of the Steering Committee and the Ombudsman, and	31 32 33 34 35
(b)	whether the structures in place to support the operation of the protected disclosures scheme remain appropriate, and	36 37

	(c) the need for further review of the Act after the review under this section.	1 2
	(3) The joint committee is to consult on the review with each of the members of the Steering Committee and the members of the Steering Committee may assist the joint committee on the review and provide advice in connection with the review.	3 4 5 6
	(4) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the <i>Protected Disclosures Amendment (Public Interest Disclosures) Act 2010</i> .	7 8 9
	(5) A report on the outcome of the review is to be provided to the Minister administering this Act and tabled in each House of Parliament within 12 months after the end of the period of 5 years.	10 11 12 13
<b>[40]</b>	<b>Schedule 2 Savings, transitional and other provisions</b>	14
	Insert at the end of clause 1 (1):	15
	<i>Protected Disclosures Amendment (Public Interest Disclosures) Act 2010</i>	16 17
<b>[41]</b>	<b>Schedule 2, Part 3</b>	18
	Insert after Part 2:	19
	<b>Part 3 Provisions consequent on enactment of Protected Disclosures Amendment (Public Interest Disclosures) Act 2010</b>	20 21 22
	<b>7 Definition</b>	23
	In this Part:	24
	<i>amending Act</i> means the <i>Protected Disclosures Amendment (Public Interest Disclosures) Act 2010</i> .	25 26
	<b>8 Amended definition of “public official”</b>	27
	This Act extends to a disclosure of information made by a person who becomes a public official for the purposes of this Act because of the amendment by the amending Act of the definition of <i>public official</i> (being a disclosure made after the commencement of the amendment) even if the disclosure relates to conduct or activities engaged in, or matters arising, before the commencement of the amendment.	28 29 30 31 32 33 34

<b>9</b>	<b>Public interest disclosures policies</b>	1
	A public authority is not required to have a policy under section 6D until 3 months after the commencement of that section.	2 3 4
<b>10</b>	<b>Frivolous or vexatious disclosures</b>	5
	A disclosure that is not protected by this Act because of the operation of section 16 (Disclosures made on frivolous or other grounds) before the repeal of that section by the amending Act continues to be a disclosure that is not protected by this Act despite the repeal of that section.	6 7 8 9 10
<b>11</b>	<b>Protection against reprisals</b>	11
	(1) The amendment made by the amending Act to the maximum penalty for an offence under section 20 (1) does not apply to an offence committed before the commencement of the amendment.	12 13 14
	(2) Section 20 (1B) does not apply in respect of detrimental action taken before the commencement of that subsection but does apply to detrimental action taken after that commencement in respect of a protected disclosure made before that commencement.	15 16 17 18 19
	(3) Section 20 (4) does not apply to evidence of an offence committed before the commencement of that subsection.	20 21
<b>12</b>	<b>Compensation for reprisals</b>	22
	Section 20A does not apply in respect of detrimental action taken against a person before the commencement of that section.	23 24
<b>13</b>	<b>Injunctions to prevent reprisals</b>	25
	Section 20B extends to conduct that occurs before the commencement of that section but not so as to authorise the grant of an injunction requiring a person to do any act or thing to remedy a contravention occurring before the commencement of that section.	26 27 28 29 30
<b>14</b>	<b>Confidentiality</b>	31
	The amendment of section 22 (a) by the amending Act extends to the voluntary and public identification of a person occurring before the commencement of that amendment and to a protected disclosure made before that commencement.	32 33 34 35

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<b>15</b>	<b>Transitional disclosure procedure when public authority becomes separate office within another public authority</b>	1 2
	Section 26A extends to a disclosure made before the commencement of that section (when a public authority becomes a separate office within another public authority before that commencement) but only if the transition period referred to in that section ends after the commencement of the section.	3 4 5 6 7
<b>16</b>	<b>Local government investigating authority</b>	8
(1)	For the purposes of this Act, a reference in Division 1 of Part 5 of Chapter 13 of the <i>Local Government Act 1993</i> to the Director-General is to be construed as a reference to the Chief Executive, Local Government, in the Department of Premier and Cabinet, until an administrative changes order made after the commencement of this clause under Part 4.2 of the <i>Public Sector Employment and Management Act 2002</i> provides otherwise.	9 10 11 12 13 14 15
(2)	A disclosure made by a public official on or after 1 July 2009 and before the commencement of this clause to the Deputy Director-General (Local Government) of the Department of Premier and Cabinet or the Chief Executive, Local Government, in the Department of Premier and Cabinet, that would be protected by this Act had the disclosure been made to the Director-General of the Department of Premier and Cabinet is taken to have been made to the Director-General of that Department.	16 17 18 19 20 21 22 23 24
	<b>Note.</b> 1 July 2009 is the date of commencement of the <i>Public Sector Employment and Management (Departmental Amalgamations) Order 2009</i> . That order resulted in references to the Director-General of the Department of Local Government being construed as references to the Director-General of the Department of Premier and Cabinet.	25 26 27 28 29
<b>[42]</b>	<b>Long title</b>	30
	Omit “maladministration and waste”.	31
	Insert instead “maladministration, waste and government information contravention”.	32 33

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<b>Schedule 2</b>	<b>Amendment of other Acts</b>	1
<b>2.1</b>	<b>Defamation Act 2005 No 77</b>	2
<b>[1]</b>	<b>Schedule 1 Additional publications to which absolute privilege applies</b>	3
	Omit “ <i>Protected Disclosures Act 1994</i> ” from the heading to item 26.	4
	Insert instead “ <i>Public Interest Disclosures Act 1994</i> ”.	5
<b>[2]</b>	<b>Schedule 1, item 26 (1)</b>	6
	Omit “a public official or public authority referred to in section 8 (1) (b) or (c) of the <i>Protected Disclosures Act 1994</i> of a disclosure made to the public official or public authority”.	7
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		9
	Insert instead “a person or public authority referred to in section 8 (1) (b), (c) or (c1) of the <i>Public Interest Disclosures Act 1994</i> of a disclosure made to the person or public authority”.	10
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		12
<b>2.2</b>	<b>Education (School Administrative and Support Staff) Act 1987 No 240</b>	13
		14
	<b>Section 29 Meaning of “misconduct”</b>	15
	Omit “ <i>Protected Disclosures Act 1994</i> ” from section 29 (1) (c).	16
	Insert instead “ <i>Public Interest Disclosures Act 1994</i> ”.	17
<b>2.3</b>	<b>Government Information (Public Access) Act 2009 No 52</b>	18
	<b>Schedule 1 Information for which there is conclusive presumption of overriding public interest against disclosure</b>	19
		20
	Omit “ <i>Protected Disclosures Act 1994</i> —section 22 (Confidentiality guideline)” from item 1.	21
		22
	Insert instead “ <i>Public Interest Disclosures Act 1994</i> —section 22 (Confidentiality guidelines)”.	23
		24
<b>2.4</b>	<b>Health Records and Information Privacy Act 2002 No 71</b>	25
	<b>Sections 5 (3) (h) and 68 (3)</b>	26
	Omit “ <i>Protected Disclosures Act 1994</i> ” wherever occurring.	27
	Insert instead “ <i>Public Interest Disclosures Act 1994</i> ”.	28

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<b>2.5 Independent Commission Against Corruption Act 1988 No 35</b>	1 2
<b>Section 111D Complaints by public officials</b>	3
Omit " <i>Protected Disclosures Act 1994</i> " from section 111D (1).	4
Insert instead " <i>Public Interest Disclosures Act 1994</i> ".	5
<b>2.6 Local Government Act 1993 No 30</b>	6
<b>Section 429A Complaints about councils, councillors, delegates and staff</b>	7 8
Omit " <i>Protected Disclosures Act 1994</i> " from section 429A (1).	9
Insert instead " <i>Public Interest Disclosures Act 1994</i> ".	10
<b>2.7 Major Events Act 2009 No 73</b>	11
<b>Section 6 Designation of responsible authority</b>	12
Omit " <i>Protected Disclosures Act 1994</i> " from section 6 (b).	13
Insert instead " <i>Public Interest Disclosures Act 1994</i> ".	14
<b>2.8 Ombudsman Act 1974 No 68</b>	15
<b>Schedule 1 Excluded conduct of public authorities</b>	16
Omit " <i>Protected Disclosures Act 1994</i> " from item 12 (c).	17
Insert instead " <i>Public Interest Disclosures Act 1994</i> ".	18
<b>2.9 Police Act 1990 No 47</b>	19
<b>Section 206 Protection against reprisals</b>	20
Omit " <i>Protected Disclosures Act 1994</i> " from section 206 (2B) and (4) wherever occurring.	21 22
Insert instead " <i>Public Interest Disclosures Act 1994</i> ".	23
<b>2.10 Police Integrity Commission Act 1996 No 28</b>	24
<b>Section 135 Complaints by public officials</b>	25
Omit " <i>Protected Disclosures Act 1994</i> " from section 135 (1) and (2) wherever occurring.	26 27
Insert instead " <i>Public Interest Disclosures Act 1994</i> ".	28

<b>2.11 Privacy and Personal Information Protection Act 1998 No 133</b>	1 2
<b>Sections 4 (3) (e) and 62 (3)</b>	3
Omit “ <i>Protected Disclosures Act 1994</i> ” wherever occurring.	4
Insert instead “ <i>Public Interest Disclosures Act 1994</i> ”.	5
<b>2.12 Public Finance and Audit Act 1983 No 152</b>	6
<b>Section 52C Definitions</b>	7
Omit “ <i>Protected Disclosures Act 1994</i> ” from the definition of <i>public official</i> .	8
Insert instead “ <i>Public Interest Disclosures Act 1994</i> ”.	9
<b>2.13 Public Sector Employment and Management Act 2002 No 43</b>	10
<b>Section 43 Meaning of “misconduct”</b>	11
Omit “ <i>Protected Disclosures Act 1994</i> ” from section 43 (1) (c).	12
Insert instead “ <i>Public Interest Disclosures Act 1994</i> ”.	13
<b>2.14 Road Transport (General) Act 2005 No 11</b>	14
<b>Section 116 Dismissal or other victimisation of employee or contractor assisting with or reporting breaches</b>	15 16
Omit “ <i>Protected Disclosures Act 1994</i> ” from section 116 (11).	17
Insert instead “ <i>Public Interest Disclosures Act 1994</i> ”.	18
<b>2.15 Teaching Service Act 1980 No 23</b>	19
<b>Section 93C Meaning of “misconduct”</b>	20
Omit “ <i>Protected Disclosures Act 1994</i> ” from section 93C (1) (c).	21
Insert instead “ <i>Public Interest Disclosures Act 1994</i> ”.	22

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<b>2.16 Technical and Further Education Commission Act 1990</b>	1
<b>No 118</b>	2
<b>Section 22E Meaning of “misconduct”</b>	3
Omit “ <i>Protected Disclosures Act 1994</i> ” from section 22E (1) (c).	4
Insert instead “ <i>Public Interest Disclosures Act 1994</i> ”.	5