



New South Wales

Public Interest Disclosures Amendment Bill 2013

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*) as follows:

- (a) to make it clear that an employee or officer of a corporation that is engaged by a public authority under a contract to provide services to or on behalf of a public authority, who provides or is to provide those services, is a public official for the purposes of the principal Act,
- (b) to provide for particular examples of persons who are public officials for the purposes of the principal Act,
- (c) to include the Public Service Commissioner on the Public Interest Disclosures Steering Committee,
- (d) to except public authorities from certain procedural requirements relating to public interest disclosures they receive, in relation to disclosures by public officials in performing their day to day functions as such public officials or under a legal obligation,
- (e) to remove the requirement that a public interest disclosure be made voluntarily,

- (f) to extend (from 2 years to 3 years) the time for instituting proceedings for the offence of reprisal for a public interest disclosure.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Public Interest Disclosures Act 1994 No 92

Schedule 1 [1] substitutes the definition of *public official* to separate out an independent category of public official, the basis for which is engagement by a public authority under a contract to provide services to or on behalf of the public authority. The item clarifies that this category of public official extends to employees and officers of a corporation that is so engaged by a public authority, who provide or are to provide the contracted services or any part of them. The item also inserts a provision containing particular examples of public officials.

Schedule 1 [2] includes the Public Service Commissioner as a member of the Public Interest Disclosures Steering Committee established by the principal Act. **Schedule 1 [3]** makes a consequential amendment relating to the quorum for a meeting of the Steering Committee.

Schedule 1 [4] excepts public authorities from the requirement that their public interest disclosure policy require an acknowledgement of receipt of a disclosure and a copy of the policy to be provided to the public official making the disclosure, in relation to any disclosures made by public officials in performing their day to day functions as such public officials or under a legal obligation.

Schedule 1 [5] removes the requirement that a disclosure be made voluntarily to be protected by the principal Act.

Schedule 1 [6] extends (from 2 years to 3 years) the time for instituting proceedings for the offence of taking detrimental action against a person substantially in reprisal for the person making a public interest disclosure.

Schedule 1 [7] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act or any other Act that amends the principal Act.

Schedule 1 [8] inserts transitional provisions as a consequence of the amendments made by Schedule 1 [1] and [6].

First print



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Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Public Interest Disclosures Act 1994 No 92	3



New South Wales

Public Interest Disclosures Amendment Bill 2013

No. , 2013

A Bill for

An Act to amend the *Public Interest Disclosures Act 1994* to make further provision for the public officials covered by that Act, disclosures and other matters.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Public Interest Disclosures Amendment Act 2013</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5

Schedule 1 Amendment of Public Interest Disclosures Act 1994 No 92

[1] Section 4A

Omit the section. Insert instead:

4A Public officials

(1) In this Act, *public official* means:

- (a) an individual who is an employee of or otherwise in the service of a public authority, and includes (without limitation) each of the following:
 - (i) a person employed under the *Public Sector Employment and Management Act 2002*,
 - (ii) a member of Parliament, but not for the purposes of a disclosure made by the member,
 - (iii) a person employed by either or both of the President of the Legislative Council or the Speaker of the Legislative Assembly,
 - (iv) 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,
 - (v) an individual in the service of the Crown, or
- (b) an individual who is engaged by a public authority under a contract to provide services to or on behalf of the public authority, or
- (c) if a corporation is engaged by a public authority under a contract to provide services to or on behalf of the public authority, an employee or officer of the corporation who provides or is part to provide the contracted services or any part of those services.

(2) Without limiting subsection (1) and to avoid doubt, particular examples of public officials are as follows:

- (a) a volunteer rural fire fighter who is an officer or other member of a rural fire brigade under the *Rural Fires Act 1997*,
- (b) a volunteer officer or volunteer member of an SES unit (within the meaning of the *State Emergency Service Act 1989*),

(c)	an officer of the Royal Society for the Prevention of Cruelty to Animals, New South Wales who is an inspector under the <i>Prevention of Cruelty to Animals Act 1979</i> ,	1 2 3
(d)	a person who is employed by a management company for a managed correctional centre (within the meaning of the <i>Crimes (Administration of Sentences) Act 1999</i>) to perform duties at the correctional centre and who is authorised under section 240 of that Act to perform those duties,	4 5 6 7 8 9
(e)	an accredited certifier (within the meaning of the <i>Environmental Planning and Assessment Act 1979</i>).	10 11
(3)	A person who is a public official referred to in subsection (1) (b) or (c) is taken, for the purposes of this Act, to belong to the public authority with whom the relevant contract is made.	12 13 14
[2]	Section 6A Steering Committee	15
	Insert after section 6A (1) (g1):	16
(g2)	the Public Service Commissioner,	17
[3]	Section 6A (4)	18
	Omit “3 members”. Insert instead “4 members”.	19
[4]	Section 6D Public interest disclosures policies and guidelines	20
	Insert after section 6D (3):	21
(4)	Subsection (1A) does not apply in relation to a public interest disclosure:	22 23
(a)	made by a public official in performing his or her day to day functions as that public official, or	24 25
(b)	otherwise made by a public official, under a statutory or other legal obligation.	26 27
[5]	Section 9 Disclosures must be made voluntarily	28
	Omit the section.	29
[6]	Section 20 Protection against reprisals	30
	Omit “2 years” from section 20 (3). Insert instead “3 years”.	31
[7]	Schedule 2 Savings, transitional and other provisions	32
	Insert at the end of clause 1 (1):	33
	any other Act that amends this Act	34

[8] Schedule 2, Part 5	1
Insert after clause 17:	2
Part 5 Provisions consequent on enactment of Public Interest Disclosures Amendment Act 2013	3 4 5
18 Definition	6
In this Part:	7
<i>amending Act</i> means the <i>Public Interest Disclosures Amendment Act 2013</i> .	8 9
19 Substituted definition of “public official”	10
This Act extends to a disclosure of information made by a public official on or after the substitution of section 4A by the amending Act, even if the disclosure relates to conduct or activities engaged in, or matters arising, before that substitution.	11 12 13 14
20 Proceedings for offences against reprisals	15
Section 20 (3) (as amended by the amending Act) extends to offences against section 20 that are alleged to have been committed within 2 years before the commencement of the amendment.	16 17 18 19