

Public Interest Disclosures Act 1994 No 92

[1994-92]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Protected Disclosures Act 1994
- **Does not include amendments by**
[Crime Commission Act 2012 No 66](#) (not commenced)

Authorisation

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New South Wales

Contents

Long title	5
Part 1 Preliminary	5
1 Name of Act	5
2 Commencement	5
3 Object of Act	5
4 Definitions	6
4A Public officials	8
5 Relationship of this Act and other Acts	9
6 Act binds the Crown	9
6A Steering Committee	9
6B Oversight of Act by Ombudsman	10
6C Provision of information to Ombudsman for audit purposes	11
6CA Reports to Ombudsman by public authorities	12
6D Public interest disclosures policies and guidelines	13
6E Responsibility of head of public authority	13
Part 2 Public interest disclosures	14
7 Effect of Part	14
8 Disclosures must be made by public officials	14
9 Disclosures must be made voluntarily	15
9A Presumptions about beliefs on which disclosures are based	15
10 Disclosure to Commission concerning corrupt conduct	15
11 Disclosure to Ombudsman concerning maladministration	16

12 Disclosure to Auditor-General concerning serious and substantial waste.....	16
12A Disclosure concerning police	16
12B Disclosure concerning local government.....	17
12C Disclosure concerning Commission, ICAC Inspector and officers of Commission and ICAC Inspector	17
12D Disclosure to Information Commissioner.....	18
13 Disclosures about investigating authorities.....	18
14 Disclosures to public officials.....	19
15 Protection of misdirected disclosures	20
16 (Repealed)	21
17 Disclosures concerning merits of government policy	21
18 Disclosures motivated by object of avoiding disciplinary action.....	21
19 Disclosure to a member of Parliament or journalist.....	21
Part 3 Protections	22
20 Protection against reprisals	22
20A Compensation for reprisals.....	23
20B Injunctions to prevent reprisals	23
21 Protection against actions etc	24
22 Confidentiality guideline.....	25
23 Rights and privileges of Parliament	25
24 Other protection preserved	25
Part 4 Miscellaneous	25
25 Referral of disclosures by investigating authorities	25
26 Referral of disclosures by public officials.....	26
26A Transitional disclosure procedure when public authority becomes separate office within another public authority	27
26B Ombudsman’s role in resolution of disputes	27
27 Notification to person making disclosure.....	27
28 False or misleading disclosures	28
29 Proceedings for offences	28
30 Regulations.....	28
31 Reports to Parliament by public authorities.....	28

31A Special report by Ombudsman	29
31B Review of Commonwealth legislation	29
32 Review of Act	29
33 Savings, transitional and other provisions	30
Schedule 1 (Repealed)	30
Schedule 2 Savings, transitional and other provisions	30

Public Interest Disclosures Act 1994 No 92



New South Wales

An Act to provide protection for public officials disclosing corrupt conduct, maladministration, waste, government information contravention and local government pecuniary interest contravention in the public sector; and for related purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Public Interest Disclosures Act 1994*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Object of Act

- (1) The object of this Act is to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration, serious and substantial waste, government information contravention and local government pecuniary interest contravention in the public sector by:
 - (a) enhancing and augmenting established procedures for making disclosures concerning such matters, and
 - (b) protecting persons from reprisals that might otherwise be inflicted on them because of those disclosures, and
 - (c) providing for those disclosures to be properly investigated and dealt with.
- (2) Nothing in this Act is intended to affect the proper administration and management of an investigating authority or public authority (including action that may or is required to be taken in respect of the salary, wages, conditions of employment or discipline of a public official), subject to the following:
 - (a) detrimental action is not to be taken against a person if to do so would be in contravention of this Act, and
 - (b) beneficial treatment is not to be given in favour of a person if the purpose (or one

of the purposes) for doing so is to influence the person to make, to refrain from making, or to withdraw a disclosure.

4 Definitions

(1) In this Act:

Commission means the Independent Commission Against Corruption.

corrupt conduct has the meaning given to it by the *Independent Commission Against Corruption Act 1988*.

detrimental action is defined in section 20.

exercise of a function includes, where the function is a duty, the performance of the duty.

function includes power, authority or duty.

government information contravention means conduct of a kind that constitutes a failure to exercise functions in accordance with any provision of the *Government Information (Public Access) Act 2009*.

ICAC Inspector means the Inspector of the Independent Commission Against Corruption appointed under the *Independent Commission Against Corruption Act 1988*.

investigate includes inquire or audit.

investigating authority means:

- (a) the Auditor-General, or
- (b) the Commission, or
- (c) the Ombudsman, or
- (d) the PIC, or
- (e) the PIC Inspector, or
- (f) the local government investigating authority, or
- (g) the ICAC Inspector, or
- (h) the Information Commissioner.

investigation Act means:

- (a) the *Independent Commission Against Corruption Act 1988*, or

- (b) the *Ombudsman Act 1974*, or
- (c) the *Public Finance and Audit Act 1983*, or
- (d) the *Police Integrity Commission Act 1996*, or
- (e) the *Local Government Act 1993*, or
- (f) the *Government Information (Information Commissioner) Act 2009*.

journalist means a person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media.

local government authority means:

- (a) a council, or
- (b) a county council,

within the meaning of the *Local Government Act 1993*.

local government investigating authority means the Director-General under section 429A (Complaints about councils, councillors, delegates and staff) of the *Local Government Act 1993*.

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

maladministration is defined in section 11 (2).

officer of the ICAC Inspector means an officer of the Inspector, as defined in the *Independent Commission Against Corruption Act 1988*.

PIC means the Police Integrity Commission constituted under the *Police Integrity Commission Act 1996*.

PIC Inspector means the Inspector of the Police Integrity Commission appointed under the *Police Integrity Commission Act 1996*.

PIC officer means an officer of the Commission, as defined in the *Police Integrity Commission Act 1996*.

PCI officer means an officer of the Inspector, as defined in the *Police Integrity Commission Act 1996*.

principal officer of a public authority includes:

- (a) for the Department of the Legislative Assembly—the Clerk of the Legislative Assembly and the Speaker of the Legislative Assembly, and

- (b) for the Department of the Legislative Council—the Clerk of the Parliaments and the President of the Legislative Council, and
- (c) for the Department of Parliamentary Services—the Speaker of the Legislative Assembly, the President of the Legislative Council and the Executive Manager of the Department.

public authority means any public authority whose conduct or activities may be investigated by an investigating authority, and includes (without limitation) each of the following:

- (a) a Division of the Government Service,
- (b) a State owned corporation and any subsidiary of a State owned corporation,
- (c) a local government authority,
- (d) the NSW Police Force, PIC and PIC Inspector,
- (e) the Department of Parliamentary Services, the Department of the Legislative Assembly and the Department of the Legislative Council.

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

public official—see section 4A.

relevant investigation Act means:

- (a) in relation to an investigating authority other than the local government investigating authority—the Act that appoints or constitutes the investigating authority, and
- (b) in relation to the local government investigating authority—the [Local Government Act 1993](#).

Steering Committee means the Public Interest Disclosures Steering Committee established by section 6A.

- (2) Notes included in this Act do not form part of this Act.

4A Public officials

- (1) In this Act, **public official** 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:
 - (a) a person employed under the [Public Sector Employment and Management Act 2002](#),

- (b) a member of Parliament, but not for the purposes of a disclosure made by the member,
 - (c) a person employed by either or both of the President of the Legislative Council or the Speaker of the Legislative Assembly,
 - (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,
 - (e) an individual in the service of the Crown,
 - (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 ***independent contractor*** to the public authority).
- (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.

5 Relationship of this Act and other Acts

- (1) This Act prevails, to the extent of any inconsistency, over the provisions of any investigation Act.
- (2) However, nothing in this Act otherwise limits or affects the operation of any Act or the exercise of the functions conferred or imposed on an investigating authority or any other person or body under it.
- (3) Nothing in this Act (except section 13 (2), (4) and (4B)) authorises an investigating authority to investigate any complaint that it is not authorised to investigate under the relevant investigation Act.

6 Act binds the Crown

This Act binds the Crown in right of New South Wales.

6A Steering Committee

- (1) There is established by this Act a Public Interest Disclosures Steering Committee consisting of the following members:
 - (a) the Ombudsman, who is to be the chairperson of the Steering 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 PIC,
 - (f) the local government investigating authority,
 - (g) the Commissioner of Police,
 - (g1) the Information Commissioner,
 - (h) such other members as may be prescribed by the regulations.
- (2) The functions of the Steering Committee are:
- (a) to provide advice to the Minister on the operation of this Act and recommendations for reform, and
 - (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.
- (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 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.
- (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).
- (5) The Steering Committee is to determine its own procedures.
- (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.
- (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.

6B Oversight of Act by Ombudsman

- (1) The Ombudsman has the following functions in connection with the operation of this Act:
- (a) to promote public awareness and understanding of this Act and to promote the object of this Act,
 - (b) to provide information, advice, assistance and training to public authorities, investigating authorities and public officials on any matters relevant to this Act,

- (c) to issue guidelines and other publications for the assistance of public authorities and investigating authorities in connection with their functions under this Act,
- (d) to issue guidelines and other publications for the assistance of public officials in connection with the protections afforded to them under this Act,
- (e) to monitor and provide reports (**monitoring reports**) to Parliament on the exercise of functions under this Act and compliance with this Act by public authorities (other than investigating authorities in respect of their functions as investigating authorities),
- (f) to audit and provide reports (**audit reports**) to Parliament on the exercise of functions under this Act and compliance with this Act by public authorities (other than investigating authorities in respect of their functions as investigating authorities),
- (g) to provide reports and recommendations to the Minister about proposals for legislative and administrative changes to further the object of this Act.

Note—

The Ombudsman is also chairperson of the Steering Committee.

- (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.
- (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.
- (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 *Ombudsman Act 1974* or can be provided as a separate report and provided to the Presiding Officer of each House of Parliament.
- (5) Section 31AA of the *Ombudsman Act 1974* 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.

6C Provision of information to Ombudsman for audit purposes

- (1) For the purposes of an audit under section 6B, the Ombudsman may require the principal officer of or who constitutes a public authority:
 - (a) to give the Ombudsman a statement of information, or
 - (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

(c) to give the Ombudsman a copy of any such document.

- (2) This section does not apply to the principal officer of the Department of Parliamentary Services, the Department of the Legislative Assembly or the Department of the Legislative Council.
- (3) 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.
- (4) 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.
- (5) A provision of any Act or law that prevents or restricts access to records or disclosure of information (other than section 22 or 23 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.
- (6) Anything done by a person in compliance with a requirement of the Ombudsman under this section:
 - (a) does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and
 - (b) does not give rise to any liability for defamation or other civil liability.

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.

6D Public interest disclosures policies and guidelines

- (1) Each public authority must have a policy that provides for its procedures for receiving, assessing and dealing with public interest disclosures.
- (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.
- (2) The Ombudsman may adopt guidelines for the procedures of public authorities for receiving, assessing and dealing with public interest disclosures. The guidelines may include a model policy that provides for those procedures.
- (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.

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
 - (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.

Part 2 Public interest disclosures

7 Effect of Part

A disclosure is protected by this Act if it satisfies the applicable requirements of this Part.

8 Disclosures must be made by public officials

(1) To be protected by this Act, a disclosure must be made by a public official:

- (a) to an investigating authority, or
- (b) to the principal officer of a public authority or investigating authority or officer who constitutes a public authority, or
- (c) to:
 - (i) another officer of the public authority or investigating authority to which the public official belongs, or
 - (ii) an officer of the public authority or investigating authority to which the disclosure relates,

in accordance with any procedure established by the authority concerned for the reporting of allegations of corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention by that authority or any of its officers, or

- (c1) to the principal officer of the Department of Parliamentary Services, the Department of the Legislative Assembly or the Department of the Legislative Council about the conduct of a member of Parliament, or

(d) to a member of Parliament or to a journalist.

- (2) A disclosure is protected by this Act even if it is made about conduct or activities engaged in, or about matters arising, before the commencement of this section.
- (3) A disclosure made while a person was a public official is protected by this Act even if the person who made it is no longer a public official.
- (4) A disclosure made about the conduct of a person while the person was a public official is protected by this Act even if the person is no longer a public official.

9 Disclosures must be made voluntarily

- (1) To be protected by this Act, a disclosure must be made voluntarily.
- (2) A disclosure is not made voluntarily for the purposes of this section if it is made by a public official in the exercise of a duty imposed on the public official by or under an Act.
- (3) A disclosure is made voluntarily for the purposes of this section if it is made by a public official in accordance with a code of conduct (however described) adopted by an investigating authority or public authority and setting out rules or guidelines to be observed by public officials for reporting corrupt conduct, maladministration, serious and substantial waste of public money, government information contravention or local government pecuniary interest contravention by investigating authorities, public authorities or public officials.
- (4) A disclosure made by a member of the NSW Police Force is made voluntarily for the purposes of this section even if it relates to the same conduct as an allegation that the member of the NSW Police Force has made in performance of a duty imposed on the member by or under the *Police Act 1990* or any other Act.
- (5) A disclosure made by a correctional officer, within the meaning of the *Crimes (Administration of Sentences) Act 1999*, is made voluntarily for the purposes of this section even if it relates to the same conduct as an allegation that the officer has made in the performance of a duty imposed on the officer by or under that Act or any other Act.

9A Presumptions about beliefs on which disclosures are based

- (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.
- (2) Such an assertion need not be express and can be inferred from the nature or content of the disclosure.

10 Disclosure to Commission concerning corrupt conduct

To be protected by this Act, a disclosure by a public official to the Commission must:

- (a) be made in accordance with the *Independent Commission Against Corruption Act 1988*, and
- (b) be a 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 corrupt conduct.

11 Disclosure to Ombudsman concerning maladministration

- (1) To be protected by this Act, a disclosure by a public official to the Ombudsman must:
 - (a) be made in accordance with the *Ombudsman Act 1974*, and
 - (b) be a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on a public authority or another public official, the public authority or public official has engaged, is engaged or proposes to engage in conduct of a kind that amounts to maladministration.
- (2) For the purposes of this Act, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is:
 - (a) contrary to law, or
 - (b) unreasonable, unjust, oppressive or improperly discriminatory, or
 - (c) based wholly or partly on improper motives.

12 Disclosure to Auditor-General concerning serious and substantial waste

- (1) To be protected by this Act, a disclosure by a public official to the Auditor-General must:
 - (a) be made in accordance with the *Public Finance and Audit Act 1983*, and
 - (b) be a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show that an authority or officer of an authority has seriously and substantially wasted public money.
- (2) In this section, **authority** and **officer of an authority** have the meanings given to those expressions in the *Public Finance and Audit Act 1983*.

12A Disclosure concerning police

- (1) To be protected by this Act, a disclosure by a public official to the PIC must:
 - (a) be made in accordance with the *Police Integrity Commission Act 1996*, and
 - (b) be a disclosure 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 police officer.
- (2) To be protected by this Act, a disclosure by a public official to the PIC Inspector must:
 - (a) be made in accordance with the *Police Integrity Commission Act 1996*, and

(b) 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 the PIC, a PIC officer or a PICI officer.

(3) To be protected by this Act, a disclosure by a public official to an investigating authority (being the Auditor-General, the Commission or the Ombudsman) concerning the PIC or a PIC officer must relate to a matter referred by the PIC Inspector to the investigating authority under section 90 (1) (f) of the *Police Integrity Commission Act 1996*.

12B Disclosure concerning local government

(1) To be protected by this Act, a disclosure by a public official to the local government investigating authority must:

(a) be made in accordance with the *Local Government Act 1993*, and

(b) be a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show corrupt conduct, maladministration, serious and substantial waste of local government money, government information contravention or local government pecuniary interest contravention by any one or more of the following:

(i) a local government authority,

(ii) a delegate of a local government authority,

(iii) a councillor (within the meaning of the *Local Government Act 1993*),

(iv) a member of a county council (within the meaning of the *Local Government Act 1993*),

(v) a member of staff of a local government authority.

(2) In this section, **local government money** includes all revenue, loans and other money collected, received or held by, for or on account of a local government authority.

12C Disclosure concerning Commission, ICAC Inspector and officers of Commission and ICAC Inspector

(1) To be protected by this Act, a disclosure by a public official to the ICAC Inspector must:

(a) be made in accordance with the *Independent Commission Against Corruption Act 1988*, and

(b) be a disclosure 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 the Commission, an officer of the Commission or an officer of the ICAC Inspector.

- (2) To be protected by this Act, a disclosure by a public official to an investigating authority (being the Auditor-General or the Ombudsman) concerning the Commission or an officer of the Commission must relate to a matter referred by the ICAC Inspector to the investigating authority under section 57C (f) of the *Independent Commission Against Corruption Act 1988*.
- (3) Despite section 11, a disclosure by a public official to the Ombudsman that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on the ICAC Inspector, the ICAC Inspector has engaged or proposes to engage in conduct of a kind that amounts to corrupt conduct or maladministration or has seriously and substantially wasted public money is protected by this Act.
- (4) The Ombudsman may investigate, and report, in accordance with the *Ombudsman Act 1974* on any matter raised by a disclosure made to it that is of a kind referred to in subsection (3).

12D Disclosure to Information Commissioner

To be protected by this Act, a disclosure by a public official to the Information Commissioner must:

- (a) be made in accordance with the *Government Information (Information Commissioner) Act 2009*, and
- (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.

13 Disclosures about investigating authorities

- (1) Despite section 10, a disclosure by a public official to the Commission that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on the Ombudsman, the Ombudsman or an officer of the Ombudsman has engaged, is engaged or proposes to engage in conduct of a kind that amounts to maladministration is protected by this Act.
- (2) The Commission may investigate, and report, in accordance with the *Independent Commission Against Corruption Act 1988* on any matter raised by a disclosure made to it that is of a kind referred to in subsection (1).
- (3) Despite section 11, a disclosure by a public official to the Ombudsman that the person

making the disclosure honestly believes, on reasonable grounds, shows or tends to show:

(a), (b) (Repealed)

(c) that the Auditor-General or a member of the staff of the Auditor-General has seriously and substantially wasted public money,

is protected by this Act.

(4) The Ombudsman may investigate, and report, in accordance with the *Ombudsman Act 1974* on any matter raised by a disclosure made to it that is of a kind referred to in subsection (3). For the purposes of such an investigation the Ombudsman may engage consultants or other persons for the purpose of getting expert assistance.

(4A) Despite section 10, a disclosure by a public official to the Commission that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on the PIC Inspector, the PIC Inspector or a PICI officer has engaged or proposes to engage in conduct of a kind that amounts to corrupt conduct or maladministration or has seriously and substantially wasted public money is protected by this Act.

(4B) The Commission may investigate, and report, in accordance with the *Independent Commission Against Corruption Act 1988* on any matter raised by a disclosure made to it that is of a kind referred to in subsection (4A).

(5) An investigating authority may decline to investigate or may discontinue the investigation of any matter referred to in this section.

(6) A disclosure referred to in this section is protected by this Act only if it satisfies all other applicable requirements of this Part.

14 Disclosures to public officials

(1) To be protected by this Act, a disclosure by a public official to the principal officer of, or officer who constitutes, a public authority 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, serious and substantial waste of public money or government information contravention by the authority or any of its officers or by another public authority or any of its officers.

(2) To be protected by this Act, a disclosure by a public official to:

(a) another officer of the public authority to which the public official belongs, or

(b) an officer of the public authority to which the disclosure relates,

in accordance with any procedure established by the authority concerned for the reporting of allegations of corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention by that authority or any of its officers 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, serious and substantial waste of public money or government information contravention (whether by that authority or any of its officers or by another public authority or any of its officers).

(2A) To be protected by this Act, a disclosure by a public official to the principal officer of the Department of Parliamentary Services, the Department of the Legislative Assembly or the Department of the Legislative Council about the conduct of a member of Parliament must:

- (a) be 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, and
- (b) 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.

(3) In this section:

public authority includes an investigating authority.

15 Protection of misdirected disclosures

(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 public interest disclosure if:

- (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
- (b) the investigating authority could have referred the disclosure under Part 4 but did not do so because it has power to investigate the matter concerned under the relevant investigation Act.

(2) A **misdirected disclosure** is a disclosure that is not a public interest disclosure because it was not made to the appropriate investigating authority or public authority (but that would have been a public interest disclosure had it been made to the appropriate investigating authority or public authority).

16 (Repealed)

17 Disclosures concerning merits of government policy

- (1) A disclosure made by a public official that principally involves questioning the merits of government policy is not (despite any other provision of this Part) protected by this Act.
- (2) In this section, **government policy** includes the policy of the governing body of a local government authority.

18 Disclosures motivated by object of avoiding disciplinary action

A disclosure that is made solely or substantially with the motive of avoiding dismissal or other disciplinary action, not being disciplinary action taken in reprisal for the making of a public interest disclosure, is not (despite any other provision of this Part) a public interest disclosure.

19 Disclosure to a member of Parliament or journalist

- (1) A disclosure by a public official to a member of Parliament, or to a journalist, is protected by this Act if the following subsections apply.
- (2) The public official making the disclosure must have already made substantially the same disclosure to an investigating authority, public authority or officer of a public authority in accordance with another provision of this Part.
- (3) The investigating authority, public authority or officer to whom the disclosure was made or, if the matter was referred, the investigating authority, public authority or officer to whom the matter was referred:
 - (a) must have decided not to investigate the matter, or
 - (b) must have decided to investigate the matter but not completed the investigation within 6 months of the original disclosure being made, or
 - (c) must have investigated the matter but not recommended the taking of any action in respect of the matter, or
 - (d) must have failed to notify the person making the disclosure, within 6 months of the disclosure being made, of whether or not the matter is to be investigated.
- (4) The public official must have reasonable grounds for believing that the disclosure is substantially true.
- (5) The disclosure must be substantially true.

Part 3 Protections

20 Protection against reprisals

- (1) A person who takes detrimental action against another person that is substantially in reprisal for the other person making a public interest disclosure is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (1A) In any proceedings for an offence against this section, it lies on the defendant to prove that detrimental action shown to be taken against a person was not substantially in reprisal for the person making a public interest disclosure.

- (1B) A public official who takes detrimental action against another person that is substantially in reprisal for the other person making a public interest 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:

- (a) by or under an Act that regulates the employment or service of the public official, or
- (b) by or under a contract of employment or contract for services that governs the employment or engagement of the public official.

- (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 public interest disclosure even if the other person did not in fact make a public interest disclosure.

- (2) In this Act, **detrimental action** means action causing, comprising or involving any of the following:

- (a) injury, damage or loss,
- (b) intimidation or harassment,
- (c) discrimination, disadvantage or adverse treatment in relation to employment,
- (d) dismissal from, or prejudice in, employment,
- (e) disciplinary proceeding.

- (3) Proceedings for an offence against this section may be instituted at any time within 2 years after the offence is alleged to have been committed.

- (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.

20A Compensation for reprisals

- (1) A person who takes detrimental action against another person that is substantially in reprisal for the other person making a public interest disclosure is liable in damages for any loss that the other person suffers as a result of that detrimental action.
- (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 public interest disclosure even if the other person did not in fact make a public interest disclosure.
- (3) Damages recoverable under this section do not include exemplary or punitive damages or damages in the nature of aggravated damages.
- (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 *Industrial Relations Act 1996* or any other law.

20B Injunctions to prevent reprisals

- (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).
- (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.

- (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.
- (4) The Court may discharge or vary an injunction granted under this section.
- (5) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
 - (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
 - (b) whether or not the person has previously engaged in conduct of that kind, and
 - (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.
- (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.

21 Protection against actions etc

- (1) A person is not subject to any liability for making a public interest disclosure and no action, claim or demand may be taken or made of or against the person for making the disclosure.
- (2) This section has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure (whether or not imposed by an Act) applicable to the person.
- (3) The following are examples of the ways in which this section protects persons who make public interest disclosures. A person who has made a public interest disclosure:
 - has a defence of absolute privilege in respect of the publication to the relevant investigating authority, public authority, public official, member of Parliament or journalist of the disclosure in proceedings for defamation
 - on whom a provision of an Act (other than this Act) imposes a duty to maintain confidentiality with respect to any information disclosed is taken not to have committed an offence against the Act
 - who is subject to an obligation by way of oath, rule of law or practice to maintain confidentiality with respect to the disclosure is taken not to have breached the oath, rule of law or practice or a law relevant to the oath, rule or practice
 - is not liable to disciplinary action because of the disclosure.

22 Confidentiality guideline

- (1) An investigating authority or public authority (or officer of an investigating authority or public authority) or public official to whom a public interest disclosure is made or referred is not to disclose information that might identify or tend to identify a person who has made the public interest disclosure unless:
 - (a) the person consents in writing to the disclosure of that information, or it is generally known that the person has made the public interest disclosure as a result of the person having voluntarily identified themselves (otherwise than by making the public interest disclosure) as the person who made the public interest disclosure, or
 - (b) it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern, or
 - (c) the investigating authority, public authority, officer or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.
- (2) As part of its procedures for receiving, assessing and dealing with public interest 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 public interest disclosure made by the public official.

Note—

These procedures are required to be the subject of a policy of the public authority under section 6D.

23 Rights and privileges of Parliament

Nothing in this Act affects the rights and privileges of Parliament in relation to the freedom of speech, and debates and proceedings, in Parliament.

24 Other protection preserved

This Act does not limit the protection given by any other Act or law to a person who makes disclosures of any kind.

Part 4 Miscellaneous

25 Referral of disclosures by investigating authorities

- (1) An investigating authority may refer any disclosure concerning an allegation of corrupt conduct, maladministration, serious and substantial waste, government information contravention or local government pecuniary interest contravention that is made to it by a public official to another investigating authority or to a public official or public authority considered by the authority to be appropriate in the circumstances,

for investigation or other action.

- (2) The investigating authority must refer such a disclosure if:
 - (a) it is not authorised to investigate the matter concerned under the relevant investigation Act, and
 - (b) it is of the opinion that another investigating authority or some public official or public authority may appropriately deal with the matter concerned.
- (3) A disclosure may be referred before or after the matter concerned has been investigated and whether or not any investigation of the matter is complete or any findings have been made by the investigating authority.
- (4) The investigating authority may communicate to the other investigating authority or to the public official or public authority any information the investigating authority has obtained during the investigation (if any) of the matter concerned.
- (5) The investigating authority may recommend what action should be taken by the other investigating authority or the public official or public authority.
- (6) The investigating authority is not to refer the disclosure to another investigating authority, or to a public official or public authority, except after taking into consideration the views of the authority, public official or public authority.
- (7) An investigating authority referring a matter to another investigating authority may enter into arrangements with the other authority:
 - (a) to avoid duplication of action, and
 - (b) to allow the resources of both authorities to be efficiently and economically used to take action, and
 - (c) to ensure that action is taken in a manner providing the most effective result.
- (8) A public interest disclosure that is referred under this section remains a public interest disclosure after it is referred.

26 Referral of disclosures by public officials

- (1) A public official may refer any disclosure concerning an allegation of corrupt conduct, maladministration, serious and substantial waste or government information contravention made to the public official under Part 2 to an investigating authority or to another public official or a public authority considered by the public official to be appropriate in the circumstances, for investigation or other action.
- (1A) If the public official to whom the disclosure referred to in subsection (1) was made does not belong to the public authority or investigating authority to which the disclosure relates, the public official must refer the disclosure to the principal officer

of, or officer who constitutes, the authority concerned, or to an investigating authority, for investigation or other action.

- (2) The public official may communicate to the investigating authority, the other public official or the public authority any information the public official has obtained during investigation (if any) of the matter concerned.
- (3) A public interest disclosure that is referred under this section remains a public interest disclosure after it is referred.

26A Transitional disclosure procedure when public authority becomes separate office within another public authority

- (1) If a public authority becomes a separate office within another public authority (the ***new public authority***), 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.
- (2) The ***transition period*** 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:
 - (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,
 - (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.
- (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 authorities that become separate offices of the new public authority.

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.

27 Notification to person making disclosure

The investigating authority, public authority or officer to whom a disclosure is made under this Act or, if the disclosure is referred, the investigating authority, public authority or officer to whom the disclosure is referred must notify the person who made the disclosure, within 6 months of the disclosure being made, of the action taken or proposed to be taken in respect of the disclosure.

28 False or misleading disclosures

A public official must not, in making a disclosure to an investigating authority, public authority or public official, wilfully make any false statement to, or mislead or attempt to mislead, the investigating authority, public authority or public official.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

29 Proceedings for offences

Proceedings for an offence against this Act are to be dealt with summarily before the Local Court.

30 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (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.

31 Reports to Parliament by public authorities

- (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.
- (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 *Annual Reports (Departments) Act 1985* or the *Annual Reports (Statutory Bodies) Act 1984*.
- (3) The regulations may make provision for or with respect to:
 - (a) the information to be included in annual reports, and
 - (b) the form in which annual reports are to be prepared.
- (4) In this section, a reference to the reporting year of a public authority is a reference to:
 - (a) the financial year of the public authority for the purposes of the *Annual Reports (Departments) Act 1985* or the *Annual Reports (Statutory Bodies) Act 1984*, or
 - (b) if the public authority does not have a financial year for the purposes of either of those Acts, the year ending 30 June.

31A Special report by Ombudsman

- (1) The power of the Ombudsman to make a special report under section 31 (Special report to Parliament) of the *Ombudsman Act 1974* 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, including systemic or other problems identified by the Ombudsman in connection with the operation of this Act.
- (2) A special report can include proposals for legislative change.
- (3) The Minister must table in each House of Parliament a response to any special report of the Ombudsman made pursuant to this section. The Minister's response to a special report must address each proposal for legislative change included in the report.

Note—

The requirements of the *Ombudsman Act 1974* apply in respect of a special report under section 31 of that Act on matters arising under this Act.

31B Review of Commonwealth legislation

- (1) The Steering Committee is to review any legislation of the Commonwealth that is 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.
- (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).
- (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.
- (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.

32 Review of Act

- (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.
- (2) Without limiting subsection (1), the review is to consider:
 - (a) the effectiveness of the amendments made by the *Protected Disclosures Amendment (Public Interest Disclosures) Act 2010*, in particular the amendments providing for the role of the Steering Committee and the Ombudsman, and

- (b) whether the structures in place to support the operation of the public interest disclosures scheme remain appropriate, and
 - (c) the need for further review of the Act after the review under this section.
- (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.
- (4) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Protected Disclosures Amendment (Public Interest Disclosures) Act 2010*.
- (5) The joint committee is to report on the outcome of the review to both Houses of Parliament as soon as practicable after the completion of the review.
- (6) The Minister administering this Act is to provide a response to the outcome of the report to both Houses of Parliament within 6 months of the report being tabled.

33 Savings, transitional and other provisions

Schedule 2 has effect.

Schedule 1 (Repealed)

Schedule 2 Savings, transitional and other provisions

(Section 33)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Protected Disclosures Amendment (Police) Act 1998

Statute Law (Miscellaneous Provisions) Act (No 2) 2001 (but only in so far as Schedule 1 to that Act amends this Act, the *Defamation Act 1974* and the *Local Government Act 1993*)

Statute Law (Miscellaneous Provisions) Act 2003 (but only in so far as Schedule 1 to that Act amends this Act and the *Local Government Act 1993*)

Independent Commission Against Corruption Amendment Act 2005 (but only in so far as Schedule 2 to that Act amends this Act)

Protected Disclosures Amendment (Public Interest Disclosures) Act 2010

Public Interest Disclosures Amendment Act 2011

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Savings and transitional provisions

2 Disclosures made by police officers

A disclosure made by a police officer is protected by this Act even if it is made about conduct or activities engaged in, or about matters arising, before the commencement of the *Protected Disclosures Amendment (Police) Act 1998*.

3 Protection against reprisals

Section 20 (1A) does not apply in relation to a proceeding the hearing of which began before the commencement of that subsection.

4 Disclosures made by correctional officers

Section 9 (5), as inserted by the *Statute Law (Miscellaneous Provisions) Act 2001*, applies to a disclosure made by a correctional officer even if the disclosure relates to conduct or activities engaged in, or matters arising, before the commencement of the subsection.

5 Disclosures to Director-General of Department of Local Government concerning serious and substantial waste in local government

- (1) A disclosure referred to in section 12B is protected by this Act even if it relates to conduct or activities engaged in, or matters arising, before the commencement of that section.
- (2) A disclosure referred to in section 12B as amended by Schedule 1.40 [1] to the *Statute Law (Miscellaneous Provisions) Act 2003* is protected by this Act even if it relates to conduct or activities engaged in, or matters arising, before the commencement of that amendment.

6 Proceedings for certain offences

Section 20 (3) extends to apply to proceedings for offences against section 20 committed less than 6 months before the commencement of that subsection.

Part 3 Provisions consequent on enactment of Protected Disclosures Amendment (Public Interest Disclosures) Act 2010

7 Definition

In this Part:

amending Act means the *Protected Disclosures Amendment (Public Interest Disclosures) Act 2010*.

8 Amended definition of “public official”

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 **public official** (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.

9 Public interest disclosures policies

A public authority is not required to have a policy under section 6D until 3 months after the commencement of that section.

10 Frivolous or vexatious disclosures

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.

11 Protection against reprisals

- (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.
- (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 public interest disclosure made before that commencement.
- (3) (Repealed)

12 Compensation for reprisals

Section 20A does not apply in respect of detrimental action taken against a person before the commencement of that section.

13 Injunctions to prevent reprisals

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.

14 Confidentiality

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 public interest disclosure made before that commencement.

15 Transitional disclosure procedure when public authority becomes separate office within another public authority

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.

16 Local government investigating authority

- (1) For the purposes of this Act, a reference in Division 1 of Part 5 of Chapter 13 of the [Local Government Act 1993](#) 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 [Public Sector Employment and Management Act 2002](#) provides otherwise.
- (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.

Note—

1 July 2009 is the date of commencement of the [Public Sector Employment and Management \(Departmental Amalgamations\) Order 2009](#). 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.

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.