

# Public Interest Disclosures Act 2022 No 14

[2022-14]



New South Wales

## Status Information

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# Public Interest Disclosures Act 2022 No 14



New South Wales

An Act to provide for the protection of persons who make public interest disclosures and for making and dealing with the disclosures; to repeal the *Public Interest Disclosures Act 1994* and the *Public Interest Disclosures Regulation 2011*; to make related amendments to certain legislation; and for related purposes.

## Part 1 Introduction

### Division 1 Preliminary

#### 1 Name of Act

This Act is the *Public Interest Disclosures Act 2022*.

#### 2 Commencement

This Act commences on—

- (a) the day that is 18 months after the date of assent, or
- (b) an earlier day or days to be appointed by proclamation.

#### 3 Objects of Act

The objects of this Act are as follows—

- (a) to facilitate the disclosure by public officials of serious wrongdoing in or affecting the public sector,
- (b) to promote a culture in which public interest disclosures are encouraged,
- (c) to protect public officials, witnesses and other persons from detriment or liability that might arise as a result of public interest disclosures,
- (d) to provide for the establishment and publication of policies and procedures for receiving and dealing with disclosures that are or may be voluntary public interest disclosures,
- (e) to ensure the interests of all persons affected by public interest disclosures are taken into account in dealing with the disclosures,

- (f) to provide for independent oversight of the public interest disclosure scheme established by this Act.

#### **4 Act binds Crown**

This Act binds the Crown.

#### **5 Definitions**

The Dictionary in Schedule 2 defines words used in this Act.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

#### **6 Legal personality and responsibilities of agency head**

- (1) If this Act confers or imposes a function on an agency or entity that the agency or entity is incapable of exercising merely because the agency or entity is not a person, the function is taken to be conferred or imposed on the head of the agency or entity.

**Note—**

The [Interpretation Act 1987](#) defines **person** to include an individual, a corporation and a body corporate or politic.

- (2) Without limiting subsection (1), the head of an agency is responsible for ensuring the agency complies with this Act and the agency's public interest disclosure policy.
- (3) Subsection (2) applies—
  - (a) whether or not the agency is a person, and
  - (b) whether or not the agency's functions under this Act are exercised by a person who is not the head of the agency.

**Note—**

See also sections 80 and 81.

### **Division 2 Relationship with other Acts and laws**

#### **7 General**

- (1) The obligations, protections and remedies arising under this Act in relation to a matter are additional to the obligations, protections and remedies arising under another Act or law in relation to the matter.
- (2) Without limiting subsection (1)—
  - (a) this Act does not affect a duty to disclose information imposed by another Act or law, and



- (b) this Act does not protect a person who fails to comply with a duty to disclose information imposed by another Act or law from the consequences of the failure.
- (3) Except as provided by section 58, this Act does not confer a power to deal with a public interest disclosure that is not otherwise available under another Act or law.
- (4) Except as provided by sections 8-11, 59(6) and 64(4), this Act prevails to the extent of an inconsistency with another Act or law.

## **8 Legally privileged communications**

- (1) A provision of another Act or law prevails over an inconsistent provision of this Act to the extent that the provision of the other Act or law operates in 1 of the following ways—
  - (a) to require a person to disclose information despite the disclosure breaching a privilege arising from a legally privileged communication,
  - (b) to protect a person from the consequences of breaching a privilege arising from a legally privileged communication in the circumstances mentioned in paragraph (a),
  - (c) to entitle a person to refuse to disclose information on the grounds the disclosure would breach a privilege arising from a legally privileged communication.
- (2) The privilege arising from a legally privileged communication is not waived merely because a public interest disclosure is made in breach of the privilege.

## **9 Privilege against self-incrimination**

- (1) This Act does not affect a person's privilege against self-incrimination, whether the privilege arises at general law or under another Act or law.
- (2) However, a provision of another Act or law prevails over an inconsistent provision of this Act to the extent that the provision of the other Act or law operates in 1 of the following ways—
  - (a) to require a person to disclose information despite the person's privilege against self-incrimination,
  - (b) to protect a person from the consequences of self-incrimination in the circumstances mentioned in paragraph (a),
  - (c) to entitle a person to refuse to disclose information on the grounds of the person's privilege against self-incrimination.

## **10 Public interest immunity**

- (1) This Act does not affect the right of a public official or agency to make a claim of

public interest immunity.

- (2) Without limiting subsection (1), a claim of public interest immunity is not prevented in relation to information disclosed while making or referring a public interest disclosure merely because of the making or referral of the disclosure.
- (3) However, a provision of another Act or law prevails over an inconsistent provision of this Act to the extent that the provision of the other Act or law affects the right of a public official or agency to make a claim of public interest immunity.

## 11 Powers of compulsion and entry

The following provisions prevail over an inconsistent provision of this Act—

- (a) the *Independent Commission Against Corruption Act 1988*, sections 24, 25 and 37,
- (b) the *Law Enforcement Conduct Commission Act 2016*, sections 56, 58 and 74,
- (c) the *Ombudsman Act 1974*, sections 21 and 21A,
- (d) a provision of another Act applying the *Ombudsman Act 1974*, section 21 or 21A.

## 12 Corporations legislation

An agency is declared to be an excluded matter for the purposes of the *Corporations Act 2001* of the Commonwealth (the **Corporations Act**), section 5F in relation to the Corporations Act, section 1317AAB.

### Note—

The Corporations Act, section 5F provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, the provisions that are the subject of the declaration will not apply in relation to the matter in the State concerned. This section ensures an agency, as defined in this Act, will not be a regulated entity under the Corporations Act, Part 9.4AAA.

## Division 3 Key terms

### Note—

For the meaning and categories of **public interest disclosure**, see Part 2.

## 13 Meaning of “serious wrongdoing”

In this Act, **serious wrongdoing** means 1 or more of the following—

- (a) corrupt conduct,
- (b) a government information contravention,
- (c) a local government pecuniary interest contravention,
- (d) serious maladministration,

- (e) a privacy contravention,
- (f) a serious and substantial waste of public money.

**Note—**

The categories of serious wrongdoing mentioned in paragraphs (a)–(e) are further defined in the Dictionary in Schedule 2.

**14 Meaning of “public official”**

- (1) In this Act, **public official** means 1 or more of the following—
  - (a) a person employed in or by an agency or otherwise in the service of an agency,
  - (b) a person having public official functions or acting in a public official capacity whose conduct or activities an integrity agency is authorised by another Act or law to investigate,
  - (c) an individual in the service of the Crown,
  - (d) a statutory officer,
  - (e) a person providing services or exercising functions on behalf of an agency, including a contractor, subcontractor or volunteer,
  - (f) if an entity, under a contract, subcontract or other arrangement, is to provide services on behalf of an agency or exercise functions of an agency in whole or in part—an employee, partner or officer of the entity who is to be involved in providing the services in whole or in part, or who is to exercise the functions,
  - (g) a judicial officer,
  - (h) a member of Parliament, including a Minister,
  - (i) a person employed under the [Members of Parliament Staff Act 2013](#).
- (2) The regulations may, for the purposes of this Act, declare a person—
  - (a) to be a public official, or
  - (b) not to be a public official.

**15 Meaning of “manager” of a public official**

- (1) In this Act, **manager** of a public official means—
  - (a) for a public official who is a police officer—a police officer who is of the rank of sergeant or above and is more senior in rank than the public official, or
  - (b) for a person employed under the [Members of Parliament Staff Act 2013](#)—the chief

of staff of the political office holder or member of Parliament by whom the person is employed, or

- (c) for a public official mentioned in section 14(1)(e) or (f)—a public official associated with the relevant agency who is responsible for overseeing the provision of the services or the exercise of the functions, or for managing the contract or arrangement, as applicable, or
- (d) for a person declared to be a public official under section 14(2)(a)—a person declared by the regulations to be the manager of the public official for the purposes of this Act, or
- (e) for another public official—
  - (i) a public official to whom the public official reports directly or indirectly, or
  - (ii) a public official who directly or indirectly supervises the public official in the exercise of the public official's functions.

(2) However, the following do not have managers for the purposes of this Act—

- (a) a Minister,
- (b) a judicial officer,
- (c) a chief of staff of a political office holder or member of Parliament.

**Note—**

Other public officials may also not have managers for the purposes of this Act.

(3) In this section—

**chief of staff**, of a political office holder or member of Parliament, means the person with that title employed by the political office holder or member of Parliament or, if no person with that title is employed, the most senior member of staff of the political office holder or member of Parliament.

**political office holder** has the same meaning as in the [Members of Parliament Staff Act 2013](#).

## 16 Meaning of “agency”

(1) In this Act, **agency** means 1 of the following persons or bodies—

- (a) a Public Service agency,
- (b) the group of staff comprising each of the following services, or a separate group of that staff—
  - (i) the NSW Police Force,

- (ii) the Teaching Service of New South Wales,
  - (iii) the NSW Health Service,
  - (iv) the Transport Service of New South Wales,
  - (c) a statutory body representing the Crown,
  - (d) an integrity agency,
  - (e) a public authority whose conduct or activities an integrity agency is authorised by another Act or law to investigate or audit,
  - (f) a State owned corporation or subsidiary of a State owned corporation,
  - (g) a local government authority,
  - (h) a Local Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983*,
  - (i) the Department of Parliamentary Services, the Department of the Legislative Assembly and the Department of the Legislative Council.
- (2) However, a Minister’s office is not an agency.
- (3) The regulations may, for the purposes of this Act, declare a body—
- (a) to be an agency, or
  - (b) not to be an agency.
- (4) The regulations may declare a specified agency to be part of and included in another specified agency, and not to be a separate agency, for the purposes of—
- (a) this Act, or
  - (b) specified provisions of this Act.

## **17 Meaning of “head” of an agency**

In this Act, **head** of an agency means—

- (a) for a Public Service agency—the head of the agency under the *Government Sector Employment Act 2013*, or
- (b) for an agency mentioned in section 16(1)(b)—the person who exercises employer functions in relation to the relevant group of staff, or
- (c) for a local government authority—the general manager, or
- (d) for a Local Aboriginal Land Council constituted under the *Aboriginal Land Rights Act*

1983—the chief executive officer, or

- (e) for the Department of the Legislative Assembly—the Speaker of the Legislative Assembly, or
- (f) for the Department of the Legislative Council—the President of the Legislative Council, or
- (g) for the Department of Parliamentary Services—the Speaker of the Legislative Assembly and the President of the Legislative Council, or
- (h) a person declared by the regulations to be the head of the agency for the purposes of this Act, or
- (i) for another agency—the individual who constitutes the agency, chief executive officer of the agency, other principal officer of the agency or other person responsible for managing the affairs of the agency.

#### **18 Meaning of “disclosure officer” for an agency**

- (1) In this Act, **disclosure officer** for an agency means a person responsible for receiving voluntary public interest disclosures on behalf of the agency, including the following—
  - (a) the head of the agency,
  - (b) for each work site that is permanently maintained by the agency and at which more than 1 person is employed—the most senior ongoing employee who ordinarily works at the site,
  - (c) if the agency has an unelected governing body—a member of the governing body,
  - (d) a person specified in the agency’s public interest disclosure policy as a person with responsibility for receiving voluntary public interest disclosures on behalf of the agency,
  - (e) a member of a class of persons, or a person employed in a position or role, specified in the agency’s public interest disclosure policy as a class, position or role with responsibility for receiving voluntary public interest disclosures on behalf of the agency.
- (2) If, contrary to Part 4, an agency does not have a public interest disclosure policy or does not include sufficient information in its public interest disclosure policy to enable disclosure officers for the agency to be contacted, a person is taken to be a disclosure officer for the agency if the person is—
  - (a) employed in or by the agency, and
  - (b) a manager of a public official associated with the agency.

**Note—**

Section 43(4) requires an agency's public interest disclosure policy to prominently include, or be accompanied by material specifying, information enabling disclosure officers for the agency to be contacted.

- (3) In this section, a reference to a public interest disclosure policy includes a reference to material accompanying a public interest disclosure policy.

**19 Meaning of “integrity agency”**

In this Act, **integrity agency** means 1 of the following—

- (a) the Ombudsman,
- (b) the Auditor-General,
- (c) the Independent Commission Against Corruption,
- (d) the Inspector of the Independent Commission Against Corruption,
- (e) the Law Enforcement Conduct Commission,
- (f) the Inspector of the Law Enforcement Conduct Commission,
- (g) the Secretary of the Department of Planning, Industry and Environment when exercising functions under the following provisions of the [Local Government Act 1993](#)—
  - (i) Chapter 13, Part 5, Division 1,
  - (ii) Chapter 14, Part 1, Division 3,
  - (iii) Chapter 14, Part 3, Division 1,
  - (iv) section 734A,
- (h) the Privacy Commissioner,
- (i) the Information Commissioner,
- (j) a person or body declared by the regulations to be an integrity agency for the purposes of this Act.

**20 Key terms—relationships**

- (1) In this Act, a disclosure is **about** serious wrongdoing if the disclosure—
- (a) includes an allegation of the serious wrongdoing, or
  - (b) otherwise shows or tends to show the serious wrongdoing.

- (2) To avoid doubt, a disclosure may be about serious wrongdoing whether or not the serious wrongdoing occurred.
- (3) In this Act, a disclosure **relates to** an agency if the disclosure is about serious wrongdoing—
  - (a) by the agency, or
  - (b) by a public official associated with the agency, or
  - (c) that otherwise affects, or might affect, the exercise of the functions of the agency.
- (4) To avoid doubt, a disclosure about serious wrongdoing does not relate to an agency merely because the agency is an integrity agency that is authorised by another Act or law to investigate the serious wrongdoing.
- (5) In this Act, a public official is **associated with** an agency if the public official—
  - (a) constitutes the agency, or
  - (b) is employed in or by the agency or is otherwise in the service of the agency, or
  - (c) is a person providing services or exercising functions on behalf of the agency, including a contractor, subcontractor or volunteer, or
  - (d) if an entity, under a contract, subcontract or other arrangement, is to provide services on behalf of the agency or exercise functions of the agency in whole or in part—is an employee, partner or officer of the entity who is to be involved in providing the services in whole or in part, or who is to exercise the functions, or
  - (e) is declared by the regulations to be associated with the agency for the purposes of this Act.

## Part 2 Public interest disclosures

### Division 1 General

#### 21 Categories of public interest disclosure

- (1) In this Act, **public interest disclosure** means—
  - (a) a voluntary public interest disclosure, or
  - (b) a witness public interest disclosure, or
  - (c) a mandatory public interest disclosure.
- (2) However, a disclosure is not a public interest disclosure to the extent that the maker of the disclosure, in making or purporting to make the disclosure, wilfully makes a false statement to, or misleads or attempts to mislead, the agency or person to whom



the disclosure is made.

**Note—**

See also section 84.

**22 Meaning of “witness public interest disclosure”**

- (1) In this Act, **witness public interest disclosure** means a disclosure of information, in an investigation of serious wrongdoing, at the request of or in response to a requirement of a person or agency investigating the serious wrongdoing, whether or not the investigation—
- (a) relates to or arises from the making of a voluntary public interest disclosure, or
  - (b) constitutes dealing with a voluntary public interest disclosure.
- (2) However, a disclosure is not a witness public interest disclosure if the disclosure is a mandatory public interest disclosure.

**23 Meaning of “mandatory public interest disclosure”**

- (1) In this Act, **mandatory public interest disclosure** means a disclosure about serious wrongdoing made by a public official—
- (a) while meeting the ordinary requirements of the official’s particular role or functions, or
  - (b) under a statutory or other legal obligation, including the obligation imposed by section 51(1) on managers of public officials.
- (2) For the purposes of subsection (1)(b), an obligation imposed by a code of conduct is not a statutory or other legal obligation.

**Division 2 Voluntary public interest disclosures**

**24 Meaning of “voluntary public interest disclosure”**

- (1) In this Act, **voluntary public interest disclosure** means—
- (a) a disclosure that complies with each of the following—
    - (i) section 25—Makers of voluntary public interest disclosures,
    - (ii) section 26—Content of voluntary public interest disclosures,
    - (iii) section 27—Recipients of voluntary public interest disclosures, or
  - (b) a disclosure that is the subject of a determination under section 29—Deemed voluntary public interest disclosures.

**Note—**

Section 28 imposes further conditions where disclosures are made to members of Parliament or journalists.

- (2) A disclosure may be a voluntary public interest disclosure whether or not—
- (a) it is made orally or in writing, or
  - (b) it is anonymous, or
  - (c) the maker of the disclosure states the disclosure—
    - (i) is a public interest disclosure, or
    - (ii) is made under this Act.

**Note—**

The Dictionary in Schedule 2 defines **anonymous**, in relation to a disclosure, to mean that, taking into account the circumstances of the disclosure and the material accompanying the disclosure, there is no reasonably practicable means of communicating with the maker of the disclosure about the disclosure, whether or not the maker's name is known.

- (3) However, a disclosure is not a voluntary public interest disclosure if the disclosure is—
- (a) a witness public interest disclosure, or
  - (b) a mandatory public interest disclosure, or
  - (c) made orally to a Minister or a member of a Minister's staff.

**Note—**

Section 52(c) describes action to be taken by a Minister or member of a Minister's staff to whom an oral disclosure about serious wrongdoing is made by a public official.

## **25 Makers of voluntary public interest disclosures**

A disclosure complies with this section if the disclosure is made by a public official who is not a member of Parliament.

## **26 Content of voluntary public interest disclosures**

- (1) A disclosure complies with this section if the maker of the disclosure honestly, and on reasonable grounds, believes the disclosure shows or tends to show serious wrongdoing.
- (2) A disclosure does not comply with this section if the information disclosed relates only to a disagreement with a government policy, including—
- (a) a government decision concerning amounts, purposes or priorities of public expenditure, or
  - (b) a policy of the governing body of a local government authority.

- (3) A disclosure does not comply with this section if the information disclosed—
- (a) concerns only a grievance about a matter relating to the employment or former employment of an individual, and
  - (b) either—
    - (i) does not have significant implications beyond matters personally affecting or tending to personally affect the individual, or
    - (ii) relates to a disagreement with the taking or proposed taking of reasonable management action.
- (4) However, subsection (3) does not apply if the grievance arises from—
- (a) a decision made by an agency in dealing with a previous voluntary public interest disclosure, or
  - (b) alleged detrimental action relating to a previous voluntary public interest disclosure.
- (5) For the purposes of deciding whether a disclosure complies with this section, an express or implied indication by the person making the disclosure as to what the person believes in relation to the disclosure is, in the absence of evidence to the contrary, evidence the person holds the belief honestly.

## **27 Recipients of voluntary public interest disclosures**

- (1) A disclosure complies with this section if it is made to 1 or more of the following—
- (a) the head of an agency,
  - (b) another disclosure officer for an agency,
  - (c) a manager of the person making the disclosure,
  - (d) subject to section 24(3)(c)—a Minister or a member of a Minister’s staff,
  - (e) subject to section 28—a member of Parliament or a journalist.

### **Note 1—**

Section 16 defines **agency** to include an integrity agency.

### **Note 2—**

Section 50 specifies when an agency receives a disclosure. Sections 51-53 impose obligations on certain individuals to whom disclosures are made.

- (2) For the purposes of this section, a disclosure is taken to be made to the head of an agency if the disclosure is made in written correspondence that is—

- (a) sent to the agency's registered address, email address or other usual address for the receipt of electronic communications, and
- (b) not addressed to a specific individual.

## **28 Voluntary public interest disclosures to members of Parliament or journalists**

- (1) A disclosure made to a member of Parliament or a journalist is a voluntary public interest disclosure only if, in addition to complying with sections 25-27—
  - (a) the disclosure is substantially true, and
  - (b) the maker of the disclosure has previously made substantially the same voluntary public interest disclosure (the **previous disclosure**) to a person mentioned in section 27(1)(a)-(d), and
  - (c) the previous disclosure was not anonymous, and
  - (d) the maker of the previous disclosure did not waive, in writing, the right to receive information under section 59 in relation to the previous disclosure, and
  - (e) either—
    - (i) the maker of the previous disclosure has not, at the end of the investigation period, received from an agency the required information in relation to the previous disclosure, or
    - (ii) the maker of the previous disclosure has been notified by an agency, at any time, that the agency has made a decision mentioned in section 55(3) in relation to the previous disclosure.

### **Note—**

The Dictionary in Schedule 2 defines **anonymous**, in relation to a disclosure, to mean that, taking into account the circumstances of the disclosure and the material accompanying the disclosure, there is no reasonably practicable means of communicating with the maker of the disclosure about the disclosure, whether or not the maker's name is known.

- (2) In this section—

**investigation period**, in relation to a previous disclosure, means—

- (a) the period of 6 months from the making of the previous disclosure, or
- (b) if the maker of the previous disclosure applies within 6 months of making the previous disclosure for internal review of an agency decision relating to the previous disclosure—the period of 12 months from the making of the previous disclosure.

**member of Parliament** does not include a Minister.

**required information**, in relation to a previous disclosure, means—

- (a) notice of the agency’s decision to investigate the relevant serious wrongdoing in accordance with Part 5, Division 2, and
- (b) a description of the results of the investigation of the relevant serious wrongdoing, and
- (c) details of the corrective action taken, proposed or recommended as a result of the previous disclosure or the investigation.

**Note—**

Section 59 specifies information agencies must provide to the makers of voluntary public interest disclosures. Section 60 provides for the internal review of certain agency decisions.

**29 Deemed voluntary public interest disclosures**

- (1) The head of an agency may determine a disclosure made by another person is a voluntary public interest disclosure even if the disclosure would not otherwise be a voluntary public interest disclosure.
- (2) The determination—
  - (a) may be made at the head of the agency’s own initiative or at the request of the maker of the disclosure, and
  - (b) must be given in writing to the maker of the disclosure, and
  - (c) must not be made unless the head of the agency believes the disclosure shows or tends to show serious wrongdoing.
- (3) The head of the agency’s belief must be held honestly and on reasonable grounds.
- (4) However, the fact the head of the agency’s belief is not held honestly or on reasonable grounds does not affect the validity of the determination.
- (5) The written determination is admissible in criminal or civil proceedings and is evidence the disclosure is a voluntary public interest disclosure.
- (6) The determination has effect from the time it is made.
- (7) If a person who has made a disclosure requests a head of an agency make a determination in relation to the disclosure, the head of the agency must, after considering the request—
  - (a) make the determination and inform the person of the determination, or
  - (b) refuse to make the determination and inform the person of the refusal and the reasons for the refusal.

**Note—**

Members of the public who make disclosures about serious wrongdoing to integrity agencies may be entitled to protections under other Acts. See also the following—

- (a) the *Independent Commission Against Corruption Act 1988*, Part 8A,
- (b) the *Ombudsman Act 1974*, Part 4B,
- (c) the *Law Enforcement Conduct Commission Act 2016*, Part 6A.

- (8) If the head of the agency, after making a determination, forms the view the maker of the disclosure, in making the disclosure, wilfully made a false statement to, or misled or attempted to mislead, the agency or person to whom the disclosure was made, the head of the agency may revoke the determination.
- (9) The revocation has effect from the time the determination was made.
- (10) If an agency refers a disclosure that is the subject of a determination to another agency under this Act or another Act or law, the referring agency is to inform the other agency of the making of the determination.

## **Part 3 Protections**

### **Division 1 General**

#### **30 Application of Part**

This Part applies to a public interest disclosure from the time the disclosure is first made.

#### **31 Reasonable management action not prevented**

- (1) This Part does not prevent reasonable management action from being taken in relation to a public official.
- (2) Without limiting subsection (1)—
  - (a) a person, by taking reasonable management action in relation to a public official, does not—
    - (i) commit a detrimental action offence or incur other liability under this Part, or
    - (ii) commit an offence against the *Police Act 1990*, section 206, and
  - (b) action taken in relation to a public official may be reasonable management action—
    - (i) if the public official is alleged to have committed a detrimental action offence—whether or not the official has been charged with the offence, and
    - (ii) if the public official has been convicted of a detrimental action offence—on the

ground of the conduct to which the conviction relates and without further investigation of whether the conduct occurred, and

(iii) whether or not the action is taken by a manager of the public official.

(3) In this Act, **reasonable management action** taken in relation to a public official includes—

- (a) a reasonable appraisal of the public official's work performance, and
- (b) a reasonable counselling action, whether formal or informal, taken in relation to the public official's employment, and
- (c) a reasonable suspension of the public official from the public official's workplace, and
- (d) a reasonable decision to investigate serious wrongdoing or other misconduct alleged or suspected to have been committed by the public official, and
- (e) a reasonable disciplinary action, whether formal or informal, taken in relation to the public official's employment, and
- (f) a reasonable action to transfer, deploy or redeploy the public official, and
- (g) a reasonable action to terminate the public official's employment by redundancy or retrenchment, and
- (h) a reasonable action to suspend, terminate or review a contract under which the public official provides services, and
- (i) a reasonable action resulting in or relating to the public official's failure to obtain a promotion, reclassification, transfer or benefit, or to keep a benefit, in relation to the public official's employment, and
- (j) a reasonable action relating to an action mentioned in paragraphs (a)-(i).

**Example—**

The actions specified in the [Government Sector Employment Act 2013](#), section 69(4) and the [Police Act 1990](#), section 173(2) are examples of disciplinary action mentioned in paragraph (e).

(4) However, action taken in relation to a public official is not reasonable management action if—

- (a) the way of taking the action is not reasonable, or
- (b) the action is taken corruptly or fraudulently, or
- (c) the action is taken to conceal, or avoid the consequences of, serious wrongdoing, or

- (d) each of the following applies to the action—
  - (i) the person taking the action, when taking the action, has a suspicion, belief or awareness, whether correct or mistaken, that a public interest disclosure has been made, may have been made, may be made or is proposed to be made,
  - (ii) the suspicion, belief or awareness is a contributing factor to the taking of the action,
  - (iii) the action is not taken for the purpose of reducing the risk of detrimental action being taken against the public official or another person.

## Division 2 Detrimental action

### 32 Meaning of “detriment” and “detrimental action”

- (1) In this Act, **detriment** to a person means disadvantage to the person, including the following—
  - (a) injury, damage or loss caused to the person,
  - (b) damage caused to the person’s property,
  - (c) damage caused to the person’s reputation,
  - (d) intimidation, bullying or harassment,
  - (e) unfavourable treatment in relation to the person’s career, profession, employment or trade,
  - (f) discrimination, prejudice or adverse treatment, whether in relation to employment or otherwise,
  - (g) disciplinary proceedings or disciplinary action.
- (2) In this Act, **detrimental action** against a person means an act or omission causing, comprising, involving or encouraging—
  - (a) detriment to the person, or
  - (b) the threat of detriment to the person, whether express or implied.
- (3) To avoid doubt, the following actions are not detrimental action for the purposes of this Act—
  - (a) lawful action taken by a person or body to investigate serious wrongdoing or other misconduct,
  - (b) the lawful reporting or publication of a finding of serious wrongdoing or other misconduct, or the lawful making of adverse comment, resulting from



investigative action mentioned in paragraph (a),

(c) the prosecution of a person for a criminal offence.

### **33 Detrimental action offence**

(1) A person must not take detrimental action against another person if—

(a) the person suspects, believes or is aware, when taking the detrimental action, that the other person or a third person—

(i) has made, may have made, may make or proposes to make a public interest disclosure, or

(ii) is, has been or may be investigating, or proposes to investigate, serious wrongdoing, whether or not the investigation relates to or arises from the making of a voluntary public interest disclosure or constitutes dealing with a voluntary public interest disclosure, and

(b) the suspicion, belief or awareness is a contributing factor to the taking of the detrimental action.

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

#### **Note—**

It is not a detrimental action offence to take reasonable management action in relation to a public official. See section 31(2).

(2) The fact the suspicion or belief was mistaken is not a defence to a prosecution for a detrimental action offence.

(3) A detrimental action offence is an indictable offence.

(4) In a prosecution for a detrimental action offence, the accused bears the onus of proving, in relation to detrimental action established by the prosecution to have been taken by the accused—

(a) the accused did not have the suspicion, belief or awareness mentioned in subsection (1)(a), or

(b) if the accused had the suspicion, belief or awareness—the suspicion, belief or awareness was not a contributing factor to the taking of the detrimental action.

(5) It is a defence to a prosecution for a detrimental action offence that the detrimental action constituted appropriate corrective action in accordance with section 66.

(6) Proceedings for a detrimental action offence may be instituted at any time within 3 years after the offence is alleged to have been committed.

- (7) A person who has been convicted or acquitted of a detrimental action offence is not liable to be convicted of an offence against the following provisions on the same, or substantially the same, facts relied on as evidence of commission of the detrimental action offence—
- (a) the *Independent Commission Against Corruption Act 1988*, section 79I,
  - (b) the *Ombudsman Act 1974*, section 31R,
  - (c) the *Law Enforcement Conduct Commission Act 2016*, section 97H,
  - (d) the *Police Act 1990*, section 206.
- (8) A person who has been convicted or acquitted of an offence against a provision mentioned in subsection (7) is not liable to be convicted of a detrimental action offence on the same, or substantially the same, facts relied on as evidence of commission of the offence of which the person was convicted or acquitted.

**Note—**

See also the *Government Sector Employment Act 2013*, section 69(1), definition of **misconduct**.

**34 Detrimental action offence—referrals of information**

- (1) An agency must refer evidence of a detrimental action offence to—
- (a) the Commissioner of Police, and
  - (b) either—
    - (i) the Independent Commission Against Corruption, or
    - (ii) if the evidence relates to a member of the NSW Police Force or the New South Wales Crime Commission—the Law Enforcement Conduct Commission.
- (2) If a person or agency mentioned in subsection (1)(a) or (b) forms the opinion a detrimental action offence has been committed, the person or agency must, by providing a brief of evidence relating to the alleged offence, refer the alleged offence to—
- (a) the Director of Public Prosecutions, or
  - (b) if the alleged offence relates to the Director of Public Prosecutions—the Attorney General.
- (3) To avoid doubt, subsection (2) does not limit the circumstances in which the alleged offence may be referred.
- (4) An agency must notify the Ombudsman as soon as reasonably practicable after—
- (a) becoming aware of an allegation a detrimental action offence has been committed

by a public official associated with the agency, or

- (b) referring evidence under subsection (1), or
- (c) becoming aware of the outcome of a prosecution against a public official associated with the agency for the commission of a detrimental action offence, or
- (d) otherwise becoming aware of a detrimental action offence that has been committed or alleged and arises from a public interest disclosure relating to the agency.

(5) This section does not apply to the extent that it would require information to be provided to a person who is alleged or suspected to have committed the offence to which the information relates.

(6) In subsection (4), an agency is **aware** of a matter if a disclosure officer for the agency is aware, or ought reasonably to be aware, of the matter.

### **35 Detrimental action—recovery of damages**

(1) A person who takes detrimental action against another person is liable in damages under this section for injury, damage or loss suffered as a result by the other person or a third person if—

- (a) the person suspects, believes or is aware, when taking the detrimental action, that any person—
  - (i) has made, may have made, may make or proposes to make a public interest disclosure, or
  - (ii) is, has been or may be investigating, or proposes to investigate, serious wrongdoing, whether or not the investigation relates to or arises from the making of a voluntary public interest disclosure or constitutes dealing with a voluntary public interest disclosure, and
- (b) the suspicion, belief or awareness is a contributing factor to the taking of the detrimental action.

(2) The damages may be recovered in a court of competent jurisdiction.

(3) The person's liability is not affected by the fact the suspicion or belief was mistaken.

(4) In proceedings under this section, the defendant bears the onus of proving, in relation to detrimental action established by the plaintiff to have been taken by the defendant—

- (a) the defendant did not have the suspicion, belief or awareness mentioned in subsection (1)(a), or

- (b) if the defendant had the suspicion, belief or awareness—the suspicion, belief or awareness was not a contributing factor to the taking of the detrimental action.
- (5) It is a defence in proceedings under this section that the detrimental action constituted appropriate corrective action in accordance with section 66.
- (6) Damages recovered under this section may include damages in the nature of exemplary damages.
- (7) A person is not entitled to recover damages in relation to the same detrimental action under both this section and any of the following provisions—
  - (a) the *Independent Commission Against Corruption Act 1988*, section 79J,
  - (b) the *Ombudsman Act 1974*, section 31S,
  - (c) the *Law Enforcement Conduct Commission Act 2016*, section 97I.
- (8) In awarding damages under this section, a court must take into account the extent to which the plaintiff has previously received compensation for the injury, damage or loss under section 62.
- (9) Subject to subsections (7) and (8), a person’s entitlement to recover damages under this section—
  - (a) does not affect another right or remedy available to the person as a result of the relevant detrimental action, and
  - (b) does not constitute redress in relation to dismissal from employment for the purposes of the *Industrial Relations Act 1996*, section 90 or another law.
- (10) To avoid doubt, liability under this section is not liability in tort.

**Note—**

See also section 62.

### **36 Employer liability for detrimental action by employee**

A court may make the following additional orders if the court is satisfied damages are recoverable under section 35 in circumstances where the person who took the detrimental action did so in connection with the person’s position or role as an employee—

- (a) an order that the person’s employer is liable to pay the damages in whole or in part,
- (b) an order that the person and the person’s employer are jointly or severally liable to pay the damages.

**Note—**

Agencies are additionally subject to risk management obligations in the circumstances set out in section 61 and

may be liable under section 62 for injury, damage or loss suffered as a result of a failure to comply with the obligations.

### **37 Injunctions relating to detrimental action**

- (1) The Supreme Court may, on the application of 1 of the following, grant an injunction relating to the commission or possible commission of a detrimental action offence—
  - (a) an integrity agency,
  - (b) with the written approval of the Attorney General—another agency,
  - (c) the maker of a public interest disclosure,
  - (d) another person against whom detrimental action has been or may be taken.
- (2) The terms of the injunction may—
  - (a) restrain a person from engaging in conduct that would constitute a detrimental action offence, or
  - (b) require a person to do an act or thing to remedy conduct that constitutes a detrimental action offence.
- (3) An injunction restraining a person from engaging in conduct that would constitute a detrimental action offence may be granted—
  - (a) whether or not the person has previously engaged in conduct of that kind, and
  - (b) whether or not it appears to the Supreme Court the person intends to continue to engage in conduct of that kind, and
  - (c) whether or not there is an imminent danger of substantial damage to another person if the person engages in conduct of that kind.
- (4) To avoid doubt, an injunction granted under this section may—
  - (a) require a formal apology to be made to a person against whom detrimental action has been taken, or
  - (b) restrain detrimental action comprising an attempt to terminate a person's employment in a particular position or role, or
  - (c) require the reinstatement in the same or a substantially similar position or role of a person against whom detrimental action comprising termination of employment in a particular position or role has been taken.
- (5) An injunction granted in the terms specified in subsection (4)(c) is to be complied with despite an inconsistent provision in another Act or law.
- (6) An injunction may not be granted under this section to restrain or remedy—

- (a) appropriate corrective action in accordance with section 66, or
  - (b) reasonable management action in relation to a public official.
- (7) In an application under this section, a person who takes or proposes to take reasonable management action in relation to a public official bears the onus of satisfying the Supreme Court of the reasons for taking, or purpose of, the action.
- (8) The Supreme Court may grant an interim injunction pending determination of an application under this section.
- (9) The Supreme Court may not require an undertaking as to damages as a condition of granting the interim injunction.
- (10) The Supreme Court may discharge or vary an injunction or interim injunction granted under this section.
- (11) A person is not entitled to make an application in relation to the same matter under both this section and any of the following provisions—
- (a) the *Independent Commission Against Corruption Act 1988*, section 79L,
  - (b) the *Ombudsman Act 1974*, section 31U,
  - (c) the *Law Enforcement Conduct Commission Act 2016*, section 97K.

### **38 Immunity from costs orders**

- (1) A person who institutes proceedings under section 35 or 37 is not liable to pay costs incurred by another party to the proceedings unless—
- (a) the person instituted the proceedings vexatiously or without reasonable cause, or
  - (b) the person's unreasonable act or omission caused the other party to incur the costs.
- (2) The other party bears the onus of satisfying the court of the matters specified in subsection (1).

### **39 Detrimental action—relationship between criminal and civil proceedings**

A person may institute proceedings under section 35 or 37 even if—

- (a) no prosecution has been brought in relation to the relevant detrimental action, or
- (b) the person against whom the proceedings are instituted has been acquitted of a detrimental action offence on the same, or substantially the same, facts relied on in the proceedings.

## Division 3 Civil and criminal liability

### 40 Protections from liability for makers of public interest disclosures

- (1) Except as provided by this section and section 41, the maker of a public interest disclosure, in relation to the making of the disclosure—
  - (a) does not incur civil liability, including liability for breaching a duty of secrecy or confidentiality or another restriction on disclosure applicable to the person, whether or not imposed by an Act, and
  - (b) does not incur criminal liability, including liability for breaching a law or code of conduct imposing a duty of confidentiality or other restriction in relation to the disclosure of information, and
  - (c) is not liable to disciplinary action.

#### Note 1—

The maker of the disclosure may also have, in relation to the making of the disclosure, a defence of absolute privilege under the [Defamation Act 2005](#) in proceedings for defamation. See the [Defamation Act 2005](#), Schedule 1, clause 26.

#### Note 2—

This section does not protect a person who fails to comply with a duty to disclose information imposed by another Act or law from the consequences of the failure. See section 7.

- (2) This section applies to a witness public interest disclosure only to the extent that the information disclosed—
  - (a) is relevant to the investigation, or
  - (b) constitutes an independent disclosure showing or tending to show serious wrongdoing.

#### Note—

Section 65 requires public officials to use their best endeavours to assist in investigations of serious wrongdoing.

### 41 Disclosures of own past conduct

- (1) Section 40 does not protect a person against liability for past conduct of the person that is disclosed by the person while making a public interest disclosure.
- (2) However, the Attorney General may, if in the Attorney General's opinion it is appropriate, give to a person who makes, or proposes to make, a disclosure of the person's past conduct while making a public interest disclosure an undertaking that the disclosure or the fact of the disclosure will not be used in evidence against the person, other than in proceedings relating to the falsity of the disclosure.

- (3) An integrity agency may recommend to the Attorney General a person be given an undertaking.
- (4) If the Attorney General gives an undertaking, the disclosure or the fact of the disclosure, as applicable, is not admissible in evidence against the person in civil or criminal proceedings, other than proceedings relating to the falsity of the disclosure.
- (5) An undertaking may be given conditionally or unconditionally.

**Note—**

Section 9 contains further provisions about the privilege against self-incrimination.

## **Part 4 Public interest disclosure policies**

### **42 Policy mandatory for agencies**

An agency must have a public interest disclosure policy.

### **43 Content of policy**

- (1) An agency's public interest disclosure policy must specify the agency's procedures for the following—
  - (a) dealing with disclosures that are or may be voluntary public interest disclosures,
  - (b) acknowledging receipt of voluntary public interest disclosures and providing information to the makers of voluntary public interest disclosures,
  - (c) taking steps to assess and minimise the risk of detrimental action, other than reasonable management action, being taken against a person as a result of voluntary public interest disclosures being made,
  - (d) dealing with allegations a detrimental action offence has been committed by or against a public official associated with the agency,
  - (e) maintaining confidentiality in relation to voluntary public interest disclosures and protecting the identity of the makers of voluntary public interest disclosures,
  - (f) taking appropriate corrective action in response to findings of serious wrongdoing or other misconduct that arise from voluntary public interest disclosures relating to the agency,
  - (g) record-keeping and reporting in relation to voluntary public interest disclosures, including the preparation of annual returns,
  - (h) establishing internal oversight of the agency's compliance with this Act,
  - (i) otherwise complying with this Act.



- (2) An agency's public interest disclosure policy must specify—
  - (a) the responsibilities imposed by this Act on—
    - (i) the head of the agency, and
    - (ii) other disclosure officers for the agency, and
  - (b) the responsibility imposed by section 51(1) on managers of public officials associated with the agency.
- (3) An agency's public interest disclosure policy must include information about the protections available under this Act to makers of—
  - (a) voluntary public interest disclosures, and
  - (b) other categories of public interest disclosure.
- (4) An agency's public interest disclosure policy must prominently include, or be accompanied by, the following—
  - (a) a list identifying disclosure officers for the agency by class, position, role or name,
  - (b) information enabling disclosure officers for the agency to be contacted.

#### **44 Relationship between policy and Ombudsman's guidelines**

If the Ombudsman publishes guidelines under section 73, an agency must have regard to the guidelines in preparing its public interest disclosure policy.

#### **45 Adoption of model policy**

If the Ombudsman publishes a model public interest disclosure policy under section 73(a), an agency may adopt the model policy.

#### **46 Review and update of policy**

- (1) This section applies to an agency (a **relevant agency**) that is created by—
  - (a) the amalgamation of 2 or more existing agencies, or
  - (b) the division of an existing agency.
- (2) A relevant agency must review and, if necessary, update its public interest disclosure policy within 90 days of the amalgamation or division.

#### **47 Publication requirements**

- (1) An agency's public interest disclosure policy must be prominently published on—
  - (a) the agency's public website, and

(b) the agency's intranet.

(2) An agency with no public website or intranet must ensure the agency's public interest disclosure policy is readily accessible to all public officials associated with the agency.

#### **48 Agency to ensure awareness of employees and other persons**

(1) An agency must ensure all public officials associated with the agency are made aware of—

(a) how to make a voluntary public interest disclosure, and

(b) the agency's public interest disclosure policy, and

(c) the fact a person who is dissatisfied with the way in which a voluntary public interest disclosure has been dealt with may be entitled to take further action under this Act or another Act or law.

**Note—**

Section 28 describes conditions under which a disclosure made to a member of Parliament or a journalist is a voluntary public interest disclosure. Section 60 provides for the internal review of certain agency decisions.

(2) An agency must ensure each of the following persons receives training in relation to the person's responsibilities under this Act and the agency's public interest disclosure policy—

(a) the head of the agency,

(b) another disclosure officer for the agency,

(c) a manager of a public official associated with the agency.

**Note—**

Under the *Ombudsman Act 1974*, section 38A, the Ombudsman may charge the agency reasonable fees for training provided by the Ombudsman under this subsection.

(3) The regulations may make further provision about—

(a) how agencies are to comply with subsection (1), and

(b) the provision of training under subsection (2).

## **Part 5 Receiving and dealing with voluntary public interest disclosures**

### **Division 1 Receipt of disclosures**

#### **49 Agency obligation on receipt of disclosures that are or may be voluntary public interest**

## **disclosures**

- (1) An agency that receives a disclosure must deal with the disclosure as a voluntary public interest disclosure in accordance with Division 2 if—
  - (a) the disclosure is a voluntary public interest disclosure, or
  - (b) the disclosure is about serious wrongdoing and is made by a person who is or appears to be a public official, but is not a mandatory public interest disclosure or a witness public interest disclosure.
- (2) However, the agency may cease to deal with the disclosure as a voluntary public interest disclosure if—
  - (a) the agency decides the disclosure is not a voluntary public interest disclosure, and
  - (b) the disclosure is not in fact a voluntary public interest disclosure.

### **Note—**

Section 59(4) requires the agency to inform the maker of the disclosure of a cessation under this subsection if the maker of the disclosure states the disclosure is a public interest disclosure. The maker may apply for internal review under section 60.

## **50 Agency receipt of disclosures**

In this Act, an agency **receives** a disclosure when the disclosure is—

- (a) made to a disclosure officer for the agency, including the head of the agency, or
- (b) communicated to a disclosure officer for the agency—
  - (i) under section 51 or 52, or
  - (ii) while being referred to the agency, or
- (c) otherwise communicated to the agency in accordance with an applicable law, policy, procedure or arrangement.

### **Example—**

An applicable arrangement may include an arrangement with an external entity—see section 81(3)(a).

## **51 Obligation of managers of public officials**

- (1) A manager to whom a voluntary public interest disclosure is made, and who is not a head of an agency or a disclosure officer for an agency, must, as soon as reasonably practicable, communicate the disclosure to a disclosure officer for an agency with which either the manager or the public official who made the disclosure is associated.
- (2) However, the manager is not required to make the communication if the manager is or becomes aware the public official has made substantially the same disclosure to

the head of, or another disclosure officer for, an agency with which either the manager or the public official is associated.

## **52 Obligation of Ministers and staff members**

A Minister or member of a Minister's staff to whom a disclosure mentioned in section 49(1)(a) or (b) is made must, as soon as reasonably practicable—

- (a) communicate the disclosure to a disclosure officer for an agency that is responsible to the Minister, or
- (b) communicate the disclosure to an integrity agency, or
- (c) if the disclosure was made orally—direct the maker of the disclosure, for the purposes of remaking the disclosure, to a disclosure officer for an agency that is responsible to the Minister or to an integrity agency.

### **Note—**

A disclosure is not a voluntary public interest disclosure if it is made orally to a Minister or a member of a Minister's staff—see section 24(3)(c).

## **53 Written record of oral disclosures**

- (1) If a disclosure mentioned in section 49(1)(a) or (b) is made orally to a person to whom a disclosure may be made in compliance with section 27, the person must make a written record of the disclosure.
- (2) Subsection (1) does not apply to Ministers or members of Ministers' staff.

## **Division 2 Dealing with voluntary public interest disclosures**

### **54 Agency action under Division**

- (1) If the Ombudsman publishes guidelines under section 73, an agency must have regard to the guidelines in relation to action or proposed action to deal with a voluntary public interest disclosure.
- (2) An agency may consult the Ombudsman or another integrity agency in relation to action or proposed action to deal with a voluntary public interest disclosure.

### **Note—**

Section 83 permits an agency to provide information relating to a public interest disclosure to another agency if doing so is reasonably necessary to exercise functions under this Act.

- (3) Except as provided by section 58, this Division does not authorise an agency to deal with a voluntary public interest disclosure in a way that is not otherwise authorised by another Act or law.

### **Note—**

Section 16 defines **agency** to include an integrity agency. See also section 7.

- (4) To avoid doubt, this Division does not prevent—
- (a) a voluntary public interest disclosure being dealt with by more than 1 agency, whether independently or jointly and whether or not the disclosure relates to more than 1 agency, or
  - (b) different parts or aspects of a voluntary public interest disclosure being dealt with separately or in different ways.

## **55 Voluntary public interest disclosures relating to agency**

- (1) An agency that receives a voluntary public interest disclosure relating to the agency must decide how to deal with the disclosure.
- (2) Without limiting subsection (1), an agency may decide to deal with the disclosure in 1 or more of the following ways—
  - (a) by investigating the relevant serious wrongdoing—
    - (i) in accordance with an applicable Act, law, procedure or policy, or
    - (ii) by conducting an audit, inquiry or assessment or by taking other action of an investigative nature, whether on a preliminary or formal basis,
  - (b) by referring the disclosure to an integrity agency,
  - (c) by referring the disclosure to a person or body that is authorised by another Act or law to investigate the relevant serious wrongdoing,
  - (d) if the agency has made an applicable arrangement with another agency under section 81(2)—by referring the disclosure to the other agency,
  - (e) if the disclosure relates to more than 1 agency—by referring the disclosure to another agency to which the disclosure relates.

### **Note—**

An agency may also be required to refer or report the disclosure to an integrity agency under another Act. See for example the [Independent Commission Against Corruption Act 1988](#), section 11.

- (3) If the agency makes 1 of the following decisions in relation to the disclosure, the agency must, as soon as reasonably practicable, provide the Ombudsman with written reasons explaining the decision—
  - (a) a decision neither to investigate the relevant serious wrongdoing nor to refer the disclosure,
  - (b) a decision to cease investigating the relevant serious wrongdoing without either completing the investigation or referring the disclosure.

**Note—**

The agency must also provide reasons to the maker of the disclosure under section 59. The maker may apply for internal review under section 60.

- (4) To avoid doubt, an investigation is not incomplete merely because the investigation does not result in a conclusion as to whether or to what extent serious wrongdoing occurred.

**56 Voluntary public interest disclosures not relating to agency**

- (1) Unless subsection (2) applies, an agency that receives a voluntary public interest disclosure not relating to the agency must deal with the disclosure in 1 or more of the following ways—
- (a) if the agency is not an integrity agency but is authorised by another Act or law to investigate the relevant serious wrongdoing—by dealing with the disclosure in accordance with the Act or law,
  - (b) by referring the disclosure to an agency to which the disclosure relates,
  - (c) by referring the disclosure to an integrity agency,
  - (d) by referring the disclosure to a person or body that is authorised by another Act or law to investigate the relevant serious wrongdoing,
  - (e) if the disclosure was referred by another agency to which the disclosure relates and whose functions the agency may exercise by an arrangement under section 81(2)—by dealing with the disclosure in accordance with the arrangement.
- (2) An integrity agency that receives a voluntary public interest disclosure not relating to the integrity agency may, if the integrity agency is authorised by section 58 or by another Act or law to investigate the relevant serious wrongdoing, deal with the disclosure in accordance with section 58 or the other Act or law.

**57 Referrals**

- (1) Without limiting other provisions of this Division, a referral of a voluntary public interest disclosure may constitute a referral for the purposes of another Act or law.
- (2) Unless the referral is mandatory under another Act or law, an agency is not to refer a voluntary public interest disclosure without considering the following—
- (a) whether the disclosure would more appropriately be dealt with by the person to whom, or body to which, the disclosure is to be referred,
  - (b) the risk of detrimental action being taken against the maker of the disclosure as a result of the referral of, or failure to refer, the disclosure.
- (3) Unless the referral is mandatory under another Act or law, an integrity agency is not

to refer a voluntary public interest disclosure to another integrity agency without considering the views of the other integrity agency.

- (4) To avoid doubt, an agency may refer a voluntary public interest disclosure—
- (a) whether or not the agency has commenced investigating, is investigating or proposes to investigate the relevant serious wrongdoing, and
  - (b) whether or not the disclosure has previously been referred, and
  - (c) to more than 1 other person or body.

### **58 Additional investigative powers**

- (1) If the Ombudsman receives 1 of the following voluntary public interest disclosures, the Ombudsman may investigate and report on a matter arising from the disclosure in accordance with the *Ombudsman Act 1974*—
- (a) a disclosure showing or tending to show serious wrongdoing by—
    - (i) the Inspector of the Law Enforcement Conduct Commission, or
    - (ii) an officer of the Inspector of the Law Enforcement Conduct Commission, or
    - (iii) the Inspector of the Independent Commission Against Corruption, or
    - (iv) an officer of the Inspector of the Independent Commission Against Corruption,
  - (b) a disclosure showing or tending to show a serious and substantial waste of public money by—
    - (i) the Auditor-General, or
    - (ii) a member of staff of the Auditor-General,
  - (c) a disclosure showing or tending to show a privacy contravention by—
    - (i) the Privacy Commissioner, or
    - (ii) a person employed in the Information and Privacy Commission,
  - (d) a disclosure showing or tending to show a government information contravention by—
    - (i) the Information Commissioner, or
    - (ii) a person employed in the Information and Privacy Commission.
- (2) If the Independent Commission Against Corruption receives a voluntary public interest disclosure showing or tending to show serious maladministration by the Ombudsman or an officer of the Ombudsman, the Independent Commission Against Corruption may

investigate and report on a matter arising from the disclosure in accordance with the *Independent Commission Against Corruption Act 1988*.

**Note—**

Except as provided by this section, this Act does not confer a power to deal with a voluntary public interest disclosure that is not otherwise available under another Act or law. See section 7.

**59 Information to be provided to disclosers**

- (1) An agency that is dealing with a voluntary public interest disclosure must ensure the maker of the disclosure has access to the agency's public interest disclosure policy by—
  - (a) giving the maker a copy of the policy, or
  - (b) directing the maker to the page of the agency's public website or intranet, as applicable, on which the policy is published, or
  - (c) otherwise giving the maker directions for accessing a copy of the policy.
- (2) An agency that is dealing with a voluntary public interest disclosure must inform the maker of the disclosure of each of the following matters as soon as reasonably practicable after the matter becomes applicable—
  - (a) the fact this Division applies to the agency's action in dealing with the disclosure,
  - (b) how the agency is dealing with, or proposes to deal with, the disclosure,
  - (c) if the agency makes a decision mentioned in section 55(3) in relation to the disclosure—the agency's reasons for the decision,
  - (d) if the agency refers the disclosure—details of the referral,
  - (e) if the agency investigates the relevant serious wrongdoing—updates on the progress of the investigation,
  - (f) if the agency completes an investigation of the relevant serious wrongdoing—
    - (i) a description of the results of the investigation, and
    - (ii) details of corrective action taken, proposed or recommended,
  - (g) other matters required to be communicated to the maker of the disclosure under this Act or the agency's public interest disclosure policy.
- (3) An agency is to provide updates on the progress of an investigation at intervals of not more than 3 months throughout the duration of the investigation.
- (4) An agency that ceases to deal with a disclosure as a voluntary public interest disclosure under section 49(2) must, if the disclosure is a purported public interest



disclosure, inform the maker of the disclosure of the agency's reasons for the decision.

(5) Subsections (1)–(4) do not apply—

(a) to an anonymous disclosure, or

(b) to the extent that the maker of a disclosure waives, in writing, the right to receive information under this section.

**Note—**

The Dictionary in Schedule 2 defines **anonymous**, in relation to a disclosure, to mean that, taking into account the circumstances of the disclosure and the material accompanying the disclosure, there is no reasonably practicable means of communicating with the maker of the disclosure about the disclosure, whether or not the maker's name is known.

(6) The following prevail over subsection (2) to the extent of an inconsistency—

(a) the *Government Sector Audit Act 1983*, section 38,

(b) the *Local Government Act 1993*, section 425.

## **60 Internal review of certain agency decisions**

(1) The maker of a disclosure may apply to an agency for internal review of the following decisions made by the agency—

(a) a decision the agency is not required by section 49(1) to deal with the disclosure as a voluntary public interest disclosure under this Division,

(b) a decision under section 49(2) to cease to deal with the disclosure as a voluntary public interest disclosure,

(c) a decision mentioned in section 55(3) in relation to the disclosure.

(2) An application for internal review must—

(a) be made within 28 days after the day on which the applicant is informed of the agency's decision, and

(b) be in writing and state the reasons the applicant considers the decision should not have been made, and

(c) be dealt with by a person (the **reviewer**) who was not substantially involved in making the decision or dealing with the disclosure.

(3) The reviewer must consider relevant material submitted by the applicant.

(4) The reviewer may decide—

(a) to confirm the agency's decision, or

(b) the disclosure is to be dealt with, or to continue to be dealt with, as a voluntary public interest disclosure by the agency under this Division.

(5) The reviewer is to notify the applicant of the reviewer's decision.

(6) If the reviewer decides the disclosure is to be dealt with, or to continue to be dealt with, as a voluntary public interest disclosure by the agency, the agency is to give effect to the decision.

## 61 Risk management

(1) This section applies to an agency (a **responsible agency**) that meets the following criteria in relation to a voluntary public interest disclosure—

(a) the agency is aware the disclosure has been made,

(b) either—

(i) the disclosure relates to the agency, or

(ii) the maker of the disclosure is known to be a public official associated with the agency.

(2) A responsible agency must take steps to assess and minimise the risk of detrimental action, other than reasonable management action, being taken against a person as a result of the disclosure being made, including—

(a) the maker of the disclosure, and

(b) a public official whose serious wrongdoing the disclosure is about.

(3) In subsection (1), an agency is **aware** a disclosure has been made if a disclosure officer for the agency is aware, or ought reasonably to be aware, the disclosure has been made.

### Note—

Section 43 provides for an agency's public interest disclosure policy to include procedures to ensure the agency's compliance with this section.

## 62 Risk management—agency liability

(1) A person who suffers injury, damage or loss as a result of the failure of an agency to comply with the agency's obligations under section 61(2) may recover damages under this section for the injury, damage or loss in a court of competent jurisdiction.

(2) The damages may be recovered—

(a) if the agency is a person—from the agency, or

(b) if the agency is not a person—from the State.

- (3) In proceedings under this section, the defendant bears the onus of proving—
  - (a) the agency did not fail to comply with its obligations under section 61(2), or
  - (b) if the agency failed to comply with its obligations—the injury, damage or loss was not suffered as a result of the failure.
- (4) Damages recovered under this section may include damages in the nature of exemplary damages.
- (5) A person is not entitled to recover damages in relation to the same detrimental action under both this section and any of the following provisions—
  - (a) the *Independent Commission Against Corruption Act 1988*, section 79],
  - (b) the *Ombudsman Act 1974*, section 31S,
  - (c) the *Law Enforcement Conduct Commission Act 2016*, section 97I.
- (6) In awarding damages under this section, a court must take into account the extent to which the plaintiff has previously received compensation for the injury, damage or loss under section 35.
- (7) Subject to subsections (5) and (6), a person’s entitlement to recover damages under this section—
  - (a) does not affect another right or remedy available to the person as a result of the relevant detrimental action, and
  - (b) does not constitute redress in relation to dismissal from employment for the purposes of the *Industrial Relations Act 1996*, section 90 or another law.
- (8) To avoid doubt, liability under this section is not liability in tort.

**Note—**

See also sections 35 and 36.

### **63 Regulations**

The regulations may make further provision about how agencies may deal with voluntary public interest disclosures.

## **Division 3 Miscellaneous**

### **64 Identifying information not to be disclosed**

- (1) Information tending to identify a person as the maker of a voluntary public interest disclosure (***identifying information***) is not to be disclosed by a public official or an agency.

- (2) However, subsection (1) does not prevent the disclosure of the identifying information if—
- (a) the person consents in writing to the disclosure of the identifying information, or
  - (b) it is generally known the person is the maker of the voluntary public interest disclosure as a result of the person's voluntary self-identification as the maker, or
  - (c) after consulting the person, the public official or agency reasonably considers it necessary to disclose the identifying information to protect a person from detriment, or
  - (d) it is necessary the identifying information be disclosed to a person whose interests are affected by the disclosure, or
  - (e) the identifying information has previously been lawfully published, or
  - (f) the identifying information is disclosed to a medical practitioner or psychologist for the purposes of the practitioner or psychologist providing medical or psychiatric care, treatment or counselling to the individual disclosing the information, or
  - (g) the identifying information is disclosed for the purposes of proceedings before a court or tribunal, or
  - (h) the disclosure of the identifying information is necessary to deal with the disclosure effectively, or
  - (i) it is otherwise in the public interest to disclose the identifying information.

**Note—**

Section 43 provides for an agency's public interest disclosure policy to include procedures to ensure the agency's compliance with this section.

- (3) To avoid doubt, a person does not voluntarily self-identify as the maker of a voluntary public interest disclosure merely by making the disclosure in confidence.
- (4) A provision of 1 of the following Acts prevails over this section to the extent of an inconsistency—
- (a) the *Independent Commission Against Corruption Act 1988*,
  - (b) the *Ombudsman Act 1974*,
  - (c) the *Law Enforcement Conduct Commission Act 2016*.
- (5) This section applies in addition to, and does not derogate from, a restriction or prohibition on the disclosure of information imposed by—
- (a) another Act or law, or

(b) an order of a court or tribunal.

**Note—**

However, section 83 authorises an agency to provide information relating to a public interest disclosure to another agency if doing so is reasonably necessary for the exercise of either agency's functions under this Act. Section 83 prevails to the extent of an inconsistency with another Act or law.

(6) In this section—

**counselling** includes psychological counselling.

**medical practitioner** has the same meaning as in the [Health Practitioner Regulation National Law \(NSW\)](#).

**psychologist** has the same meaning as in the [Health Practitioner Regulation National Law \(NSW\)](#).

## 65 Obligation to assist in investigation

A public official must use the public official's best endeavours to assist in an investigation of serious wrongdoing if asked to do so by a person dealing with a voluntary public interest disclosure on behalf of an agency.

**Note—**

A public official is entitled to protections under Part 3 if the public official makes a witness public interest disclosure or a mandatory public interest disclosure.

## 66 Corrective action

- (1) If an agency investigating a voluntary public interest disclosure finds serious wrongdoing or other misconduct occurred, each agency to which the disclosure relates must take appropriate corrective action in response to the finding.
- (2) Without limiting subsection (1), an agency may take appropriate corrective action on the ground of the conduct to which the following convictions or findings relate and without further investigation of whether the conduct occurred—
  - (a) a conviction of a public official associated with the agency for a detrimental action offence,
  - (b) a finding by an agency investigating a voluntary public interest disclosure that a detrimental action offence was committed by a public official associated with the agency, whether or not the official has been charged with the offence.
- (3) However, an agency is not required to take corrective action if no serious wrongdoing or other misconduct is found to have occurred within the agency.
- (4) In this Act, **corrective action** includes the following—
  - (a) an action specified in the [Government Sector Employment Act 2013](#), section

69(4),

- (b) an action authorised by an Act, law, procedure or policy in accordance with which serious wrongdoing is investigated,
- (c) a formal apology by an agency,
- (d) reform within an agency, including—
  - (i) improvements to relevant policies or procedures, or
  - (ii) structural change, or
  - (iii) the reallocation of resources, or
  - (iv) additional training or educational measures,
- (e) the publication of a finding of serious wrongdoing or other misconduct and a report in support of the finding,
- (f) the payment of compensation to persons affected by serious wrongdoing or other misconduct.

(5) This section does not authorise an agency to take corrective action the agency is not otherwise authorised to take.

## **Part 6 Oversight of Act**

### **Division 1 Steering Committee**

#### **67 Constitution of Steering Committee**

- (1) The Public Interest Disclosures Steering Committee is established by this Act.
- (2) The Steering Committee consists of the following members—
  - (a) the Ombudsman,
  - (b) the Secretary of the Cabinet Office,
  - (c) the Auditor-General,
  - (d) the Chief Commissioner of the Independent Commission Against Corruption,
  - (e) the Chief Commissioner of the Law Enforcement Conduct Commission,
  - (f) the Secretary of the Department of Planning, Industry and Environment,
  - (g) the Commissioner of Police,
  - (h) the Information Commissioner,

- (i) the Public Service Commissioner,
- (j) the Privacy Commissioner,
- (k) another person declared by the regulations to be a member of the Steering Committee.

(3) The Ombudsman is to be the chairperson of the Steering Committee.

### **68 Functions of Steering Committee**

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 provide advice to the Minister on regulations proposed to be made under this Act, and
- (c) to receive, consider and provide advice to the Minister on reports provided by the Ombudsman in the exercise of the Ombudsman's functions under this Act.

### **69 Appointment of nominees**

- (1) A member of the Steering Committee may appoint a nominee to act in place of the member, either generally or for a particular purpose.
- (2) A nominee is taken to be a member of the Steering Committee and may exercise the functions of the member who appointed the nominee, including the functions of chairperson.
- (3) A member may revoke an appointment of a nominee at any time.

### **70 Quorum for Steering Committee**

The quorum for a meeting of the Steering Committee is 4 members, of whom 2 must be the Ombudsman and the Secretary of the Cabinet Office or their nominees.

### **71 Procedures of Steering Committee**

The Steering Committee is to determine its own procedures.

## **Division 2 Functions of Ombudsman and reporting requirements**

### **72 Functions of Ombudsman—general**

- (1) The Ombudsman has the following functions under this Act—
  - (a) to promote public awareness and understanding of this Act and to promote the objects of this Act,

- (b) to provide information, advice, assistance and training to agencies and public officials on matters relevant to this Act,
  - (c) to publish guidelines and other materials for the assistance of—
    - (i) agencies in connection with their functions under this Act, and
    - (ii) public officials and other persons in connection with the operation of this Act and the protections available to them under this Act,
  - (d) to audit and monitor the exercise by agencies of their functions under this Act, other than functions exercised by an integrity agency in relation to disclosures that do not relate to the integrity agency,
  - (e) to provide reports and recommendations to the Minister about proposals for legislative and administrative change to further the objects of this Act,
  - (f) other functions conferred on the Ombudsman by or under this Act.
- (2) The conferral of functions on the Ombudsman by or under this Act does not limit the conferral of functions on the Ombudsman by or under the *Ombudsman Act 1974* or another Act or law.

**Example—**

Conduct that constitutes a detrimental action offence may also constitute conduct mentioned in the *Ombudsman Act 1974*, section 26(1).

### **73 Ombudsman's guidelines**

Without limiting section 72(1)(c)(i), guidelines published by the Ombudsman to assist agencies—

- (a) may be published in the form of a model public interest disclosure policy, and
- (b) may relate to all aspects of agencies' functions under this Act, including—
  - (i) establishing procedures to comply with the requirements of this Act, and
  - (ii) assessing whether disclosures are public interest disclosures, and
  - (iii) supporting persons who make voluntary public interest disclosures.

### **74 Voluntary dispute resolution**

- (1) If a dispute arises under this Act or a public interest disclosure policy in connection with a disclosure that is or may be a voluntary public interest disclosure, an agency that is dealing with the disclosure may request the Ombudsman deal with the dispute under this section.
- (2) The Ombudsman may deal with the dispute by conciliation and may arrange for a



mediator to assist in the conciliation.

**Note—**

Under the *Ombudsman Act 1974*, section 38A, the Ombudsman may charge the agency reasonable fees for conciliation services provided by the Ombudsman under this section.

- (3) The Ombudsman may arrange for a member of staff of the Ombudsman's Office or another person to conduct the conciliation on the Ombudsman's behalf.
- (4) Participation in the conciliation is voluntary and a party may withdraw at any time.
- (5) Evidence of a statement or admission made during the conciliation, or a document prepared for the purposes of the conciliation, is not admissible—
  - (a) in a subsequent investigation arising from the disclosure, unless the person who made the statement or admission, or to whom the document relates, consents to the admission of the evidence in the investigation, or
  - (b) in proceedings in a court or before a person or body authorised to hear and receive evidence.
- (6) The Ombudsman or person acting on the Ombudsman's behalf may terminate the conciliation at any time.
- (7) This section does not prevent the dispute from being dealt with otherwise than under this section.
- (8) The regulations may make further provision about the Ombudsman's functions under this section.
- (9) In this section—

**dispute**, in connection with a disclosure, includes a dispute about—

  - (a) whether the disclosure is in fact a voluntary public interest disclosure, or
  - (b) conduct or proposed conduct that constitutes or may constitute a detrimental action offence relating to the disclosure.

**75 Provision of information to Ombudsman for audit and monitoring purposes**

- (1) For the purposes of exercising the Ombudsman's auditing and monitoring functions under this Act, the Ombudsman may, by written notice, require an agency to—
  - (a) give the Ombudsman a statement of information, or
  - (b) produce to the Ombudsman a document or thing—
    - (i) under the agency's control, or
    - (ii) the production of which the agency may, in an official capacity, reasonably

require, or

(c) give the Ombudsman a copy of a document mentioned in paragraph (b).

(2) The notice must—

(a) specify or describe the information, document or thing required, and

(b) specify a time and place for compliance with the notice.

(3) The agency is required to comply with the notice.

(4) A provision of another Act or law that prevents or restricts access to records or disclosure of information does not prevent the agency from complying, or affect the agency's obligation to comply, with the notice.

(5) Action taken in compliance with the notice does not incur liability for defamation or other civil liability.

(6) This section does not apply to the Department of Parliamentary Services, the Department of the Legislative Assembly or the Department of the Legislative Council.

## **76 Annual report by Ombudsman**

(1) The Ombudsman is to report to Parliament on the following matters in relation to each period of 12 months ending on 30 June (the **reporting period**)—

(a) the Ombudsman's activities under this Act during the reporting period,

(b) the Steering Committee's activities, including recommendations made to the Minister, during the reporting period,

(c) compliance by agencies with this Act during the reporting period,

(d) information relating to voluntary public interest disclosures made during the reporting period,

(e) agencies that have failed to provide the Ombudsman with an annual return within the period specified in section 78(2).

(2) The Ombudsman's report is to be provided as soon as reasonably practicable after the end of the reporting period and no later than 6 months after the end of the period.

(3) The Ombudsman's report on the matters mentioned in subsection (1)(c) and (d) is to be based on information provided by agencies in relation to the reporting period, including annual returns provided by agencies in relation to the corresponding return period.

(4) The Ombudsman may, if the Ombudsman considers it desirable to do so, make an additional report at any time to Parliament on the Ombudsman's auditing and

monitoring activities under this Act.

- (5) The Ombudsman may provide a report under this section—
  - (a) by including the report in the Ombudsman’s annual report under the *Ombudsman Act 1974*, section 30, or
  - (b) directly to the Presiding Officer of each House of Parliament.
- (6) The Ombudsman must provide the Minister with a copy of a report under this section.
- (7) The *Ombudsman Act 1974*, section 31AA applies to a report under this section as if the report were a report made under that Act, Part 4.

## **77 Special report by Ombudsman**

- (1) The Ombudsman’s power to make a special report to Parliament under the *Ombudsman Act 1974*, section 31 extends to a report on a matter arising in connection with the exercise of the Ombudsman’s functions under this Act.
- (2) A special report may include proposals for legislative change.
- (3) If a special report is made, the Minister’s response to the report must—
  - (a) address each proposal for legislative change included in the report, and
  - (b) be tabled in each House of Parliament.

### **Note—**

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

## **78 Agencies to provide annual return to Ombudsman**

- (1) An agency must provide an annual return to the Ombudsman in relation to each period of 12 months ending on 30 June (the **return period**).
- (2) Unless the Ombudsman approves a later time, the annual return must be provided within 30 days after the end of the return period to which it relates.
- (3) The annual return is to include information about—
  - (a) voluntary public interest disclosures received by the agency during the return period, and
  - (b) action taken by the agency to deal with voluntary public interest disclosures during the return period, and
  - (c) measures taken by the agency during the return period to promote a culture in which public interest disclosures are encouraged.

- (4) The regulations may make further provision about—
  - (a) the information to be included in an annual return, and
  - (b) the form in which the information is to be provided.

## **Part 7 Miscellaneous**

### **79 Application of Act unaffected by certain matters**

This Act applies to a public interest disclosure whether or not—

- (a) the disclosure is about conduct engaged in, or matters arising, before the commencement of this section, or
- (b) the maker of the disclosure ceases to be a public official after making the disclosure, or
- (c) the disclosure is about conduct by a person who has ceased to be a public official since the commission of the conduct, or
- (d) an agency to which the disclosure relates has ceased to be an agency since the commission of the conduct the disclosure is about, or
- (e) an agency identifies or assesses the disclosure as a public interest disclosure.

### **80 Delegation of functions of agency head**

- (1) The head of an agency may—
  - (a) delegate the exercise of a function of the head of the agency under this Act, other than this power of delegation, to a person employed in or by the agency, and
  - (b) by agreement, delegate the exercise of a function of the head of the agency under this Act to the head of another agency.
- (2) Despite subsection (1), the following functions of the head of an agency may not be delegated—
  - (a) the head of the agency's functions as a disclosure officer for the agency,
  - (b) the head of the agency's responsibility for ensuring the agency complies with sections 34 and 61.

### **81 Exercise of functions on behalf of agency**

- (1) A function of an agency under this Act, including a function taken to be conferred or imposed on the head of the agency by operation of section 6(1), may be exercised by a person employed in or by the agency who is designated by the head of the agency to exercise the function.

- (2) An agency may arrange for another agency to exercise the agency's functions under this Act on behalf of the agency.
- (3) An agency may, in accordance with its public interest disclosure policy, arrange for an entity that is not an agency to exercise 1 or more of the following functions under this Act on behalf of the agency—
  - (a) the function of receiving voluntary public interest disclosures,
  - (b) the function of dealing with voluntary public interest disclosures by investigating relevant serious wrongdoing,
  - (c) the provision of training under section 48.
- (4) An agency that enters into an arrangement under subsection (2) or (3) must—
  - (a) publish the details of the arrangement prominently on—
    - (i) the agency's public website, and
    - (ii) the agency's intranet, and
  - (b) notify the Ombudsman of the arrangement.
- (5) An agency with no public website or intranet must ensure the details of the arrangement are readily accessible to all public officials associated with the agency.

## **82 Agency service contracts**

- (1) This section applies to a contract or subcontract (an **agency service contract**) under which a person or body is engaged to provide services on behalf of an agency (the **contracting agency**), including an engagement to exercise a function mentioned in section 81(3).
- (2) A contracting agency, person exercising the functions of a contracting agency or head contractor, as applicable, must not enter into an agency service contract on or after the day on which this section commences unless the terms of the contract require the engaged person or body to—
  - (a) ensure all individuals involved in providing services under the agency service contract are made aware of—
    - (i) the fact they are public officials for the purposes of this Act, and
    - (ii) the matters mentioned in section 48(1)(a)–(c), and
  - (b) notify the contracting agency of a voluntary public interest disclosure of which the person or body becomes aware that complies with section 61(1)(b) in relation to the contracting agency, and

- (c) notify the contracting agency of serious wrongdoing committed, or alleged to be committed, by an individual providing services under the agency service contract, and
  - (d) use the person or body's best endeavours to assist in an investigation of serious wrongdoing if requested to do so by a person dealing with a voluntary public interest disclosure on behalf of an agency, and
  - (e) acknowledge the following—
    - (i) the contracting agency's obligation to take corrective action under section 66,
    - (ii) the contracting agency's right to terminate the agency services contract in response to a finding of serious wrongdoing or other misconduct involving the person or body or an individual providing services under the agency service contract, and
  - (f) if the person or body subcontracts the agency service contract in whole or in part—ensure the subcontract contains terms binding the person or body engaged under the subcontract that are equivalent to the terms required by this section.
- (3) However, an agency service contract is not void or unenforceable merely because the terms of the contract do not comply with subsection (2).
- (4) The regulations may make further provision about terms that must, or must not, be included in an agency service contract or a class of agency service contracts.

### **83 Provision of information relating to public interest disclosures**

- (1) An agency may provide information relating to a public interest disclosure to another agency if doing so is reasonably necessary for the exercise of either agency's functions under this Act.
- (2) An agency may provide information relating to a public interest disclosure to a person or body investigating misconduct or wrongdoing under a law of another State, the Commonwealth or a Territory of the Commonwealth if doing so is reasonably necessary for the exercise of functions under the law by the person or body.
- (3) Subsections (1) and (2) apply in addition to an authorisation the agency may have to provide information under this Act or another Act or law.

### **84 False or misleading statements**

A person must not, in making or purporting to make a public interest disclosure or in providing information relating to a public interest disclosure, wilfully make a false statement to, or mislead or attempt to mislead, the agency or person to whom the disclosure or purported disclosure is made or the information is provided.

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

### **85 Offences relating to influencing or impeding other persons**

- (1) A person must not provide or offer to provide beneficial treatment to another person for the purposes of influencing the other person to refrain from making a public interest disclosure or to withdraw a public interest disclosure.
- (2) A person must not prevent or attempt to prevent a person, or a group or class of persons, from making public interest disclosures.

Maximum penalty—100 penalty units.

### **86 Proceedings for offences**

Proceedings for an offence against this Act, other than a detrimental action offence, are to be dealt with summarily before the Local Court.

**Note—**

The [Criminal Procedure Act 1986](#), Chapter 5, which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment, applies to and in respect of a detrimental action offence. See the [Criminal Procedure Act 1986](#), Schedule 1, Table 1 and this Act, section 33(3).

### **87 Rights and privileges of Parliament**

This Act does not affect the rights and privileges of Parliament in relation to freedom of speech and Parliamentary debates and proceedings.

### **88 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, about 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 the Minister has consulted with the Steering Committee concerning the making of the regulation.
- (3) The regulations may exempt specified agencies or classes of agencies from specified provisions of this Act.
- (4) A regulation for a definition may apply generally or be limited to specified provisions of this Act in which the defined word or expression is used.

### **89 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 the objectives.

- (2) Without limiting subsection (1), the review is to consider—
  - (a) the effectiveness of the changes made by this Act to the public interest disclosure scheme in force under the *Public Interest Disclosures Act 1994* immediately before the repeal of that Act, and
  - (b) whether the structures in place to support the operation of the public interest disclosure scheme remain appropriate, and
  - (c) the need for further review of this Act after the review under this section.
- (3) The joint committee is to consult with, and may obtain assistance or advice from, each member of the Steering Committee 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 this Act.
- (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 is to provide a response to the report to both Houses of Parliament within 6 months of the report being tabled.

## **90 Repeals**

The following are repealed—

- (a) the *Public Interest Disclosures Act 1994 No 92*,
- (b) the *Public Interest Disclosures Regulation 2011*.

## **Schedule 1 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
  - (a) a provision of this Act, or
  - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after the commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after the commencement.



- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before the commencement but not before—
- (a) for a provision of this Act—the date of assent to this Act, or
  - (b) for a provision amending this Act—the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
- (a) affect the rights of a person existing before the publication in a way prejudicial to the person, or
  - (b) impose liabilities on a person for anything done or omitted to be done before the publication.
- (6) In this section—
- person** does not include the State or an authority of the State.

## Part 2 Provisions arising from enactment of this Act

### Division 1 General provisions

#### 2 Definitions

In this Division—

**former legislation** means 1 or more of the following as in force from time to time before the repeal day—

- (a) the *Public Interest Disclosures Act 1994*,
- (b) the *Public Interest Disclosures Regulation 2011*,
- (c) an Act or law amended by this Act.

**former scheme disclosure** means a disclosure of information to which the former legislation applies or may apply that is made before the repeal day.

**new legislation** means 1 or more of the following as in force from time to time on and from the repeal day—

- (a) this Act,
- (b) the *Public Interest Disclosures Regulation 2022*,
- (c) an Act or law amended by this Act.

**remade disclosure** means a disclosure made on or after the repeal day—

- (a) to which the new legislation applies or may apply, and
- (b) that is substantially the same, and made by the same person, as a former scheme disclosure.

**repeal day** means the day on which the *Public Interest Disclosures Act 1994* is repealed.

### 3 Former scheme disclosures

- (1) On and from the repeal day, the former legislation continues to apply to a former scheme disclosure as if the former legislation had not been repealed or amended by this Act.
- (2) Without limiting subsection (1)—
  - (a) the protections conferred by the former legislation in relation to the former scheme disclosure continue to apply in relation to the disclosure, and
  - (b) the reporting obligations imposed by the former legislation in relation to the former scheme disclosure continue to apply in relation to the disclosure.

### 4 Remade disclosures—general

- (1) This section applies if—
  - (a) functions are conferred or imposed by the new legislation on a person or agency in relation to a disclosure, and
  - (b) the person or agency becomes aware the disclosure is a remade disclosure.
- (2) The person or agency may, within 28 days of becoming aware the disclosure is a remade disclosure, decide not to continue to exercise the functions in relation to the remade disclosure.

**Note—**

Functions in the nature of risk management conferred or imposed by this Act continue to apply regardless of a decision under this subsection. See subsection (8), definition of **function**.

- (3) The decision may be made whether or not the person or agency exercises or continues to exercise the functions during the 28 day period.
- (4) The decision has effect only if the person or agency gives the maker of the remade disclosure written notice of the decision as soon as reasonably practicable after making the decision.
- (5) If the person or agency continues to exercise the functions in relation to the remade disclosure, the following provisions apply to the extent that they are relevant—
  - (a) conduct committed by a person or body in relation to the associated former scheme disclosure, and that would have exercised a function of the person or body

in relation to the remade disclosure in whole or in part if it had been committed in relation to the remade disclosure, is taken to have exercised the function of the person or body in relation to the remade disclosure,

- (b) action of an investigative nature taken in relation to the associated former scheme disclosure is taken to be action taken in relation to the remade disclosure,
- (c) the person or agency may decide not to continue to exercise the functions conferred or imposed by the former legislation on the person or agency in relation to the associated former scheme disclosure.

(6) To avoid doubt, this section does not affect protections conferred by—

- (a) the new legislation, in relation to the remade disclosure, or
- (b) the former legislation, in relation to the associated former scheme disclosure.

(7) In this section, an agency is **aware** of a matter in relation to a disclosure if a disclosure officer for the agency, or a person responsible for dealing with the disclosure on behalf of the agency, is aware, or ought reasonably to be aware, of the matter.

(8) In this section—

**associated former scheme disclosure**, in relation to a remade disclosure, means the former scheme disclosure that is substantially the same as the remade disclosure.

**function** includes the functions of dealing with a disclosure and reporting about a disclosure, but does not include—

- (a) a function in the nature of risk management conferred or imposed by this Act, or
- (b) a function conferred or imposed by this section.

## **5 Remade disclosures—members of Parliament and journalists**

- (1) This section applies to a remade disclosure that is made to a member of Parliament or a journalist.
- (2) The remade disclosure is taken to meet the conditions specified in this Act, section 28(1) if the following apply at the time the remade disclosure is made—
  - (a) the remade disclosure would have been protected by operation of the *Public Interest Disclosures Act 1994*, section 19 if that Act had not been repealed by this Act,
  - (b) substantially the same remade disclosure has not been made, by the same person, to a person mentioned in this Act, section 27(1)(a)–(d).

## Division 2 Public Interest Disclosures Regulation 2022

### 6 Relationship between Regulation and Subordinate Legislation Act 1989

- (1) Schedule 3 is taken to be and has effect as a regulation made by the Governor under this Act.
- (2) The *Subordinate Legislation Act 1989*, Part 2 does not apply to the regulation, but applies to an amendment or repeal of the regulation.
- (3) For the purposes of the *Subordinate Legislation Act 1989*, section 10, the regulation is taken to be published on the day on which this Act, Schedule 3 commences.
- (4) The *Interpretation Act 1987*, sections 39–41 do not apply to the regulation, but apply to an amendment or repeal of the regulation.
- (5) Schedule 3 is repealed on the day after it commences.

**Note—**

The continued effect of the regulation is unaffected by the repeal of the Schedule. See the *Interpretation Act 1987*, section 30.

## Schedule 2 Dictionary

section 5

In this Act—

**about**, in relation to serious wrongdoing—see section 20(1).

**agency**—see section 16.

**anonymous**, in relation to a disclosure, means that, taking into account the circumstances of the disclosure and the material accompanying the disclosure, there is no reasonably practicable means of communicating with the maker of the disclosure about the disclosure, whether or not the maker's name is known.

**associated with**, in relation to an agency—see section 20(5).

**conduct** includes an act or omission.

**corrective action**—see section 66(4).

**corrupt conduct** has the same meaning as in the *Independent Commission Against Corruption Act 1988*.

**detriment**—see section 32(1).

**detrimental action**—see section 32(2).

**detrimental action offence** means an offence against section 33.

**disclose information** includes provide a document or answer a question.

**disclosure officer**, for an agency—see section 18.

**entity** has the same meaning as in the [Government Sector Finance Act 2018](#).

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**general law** means the common law and equity.

**government information contravention** means a failure, other than a trivial failure, by an agency or public official to exercise functions in accordance with—

- (a) the [Government Information \(Information Commissioner\) Act 2009](#), or
- (b) the [Government Information \(Public Access\) Act 2009](#), or
- (c) the [State Records Act 1998](#).

**head**, of an agency—see section 17.

**integrity agency**—see section 19.

**journalist** has the same meaning as in the [Evidence Act 1995](#), Part 3.10, Division 1C.

**judicial officer** has the same meaning as in the [Judicial Officers Act 1986](#).

**legally privileged communication** means a privileged communication passing between an Australian legal practitioner, in the practitioner's capacity as an Australian legal practitioner, and a person for the purposes of providing or receiving legal professional services, including—

- (a) a communication subject to legal professional privilege at general law, and
- (b) a communication subject to client legal privilege under the [Evidence Act 1995](#), Part 3.10, Division 1.

**local government authority** means a council, county council or joint organisation within the meaning of the [Local Government Act 1993](#).

**local government pecuniary interest contravention** means the contravention of an obligation imposed in connection with a pecuniary interest by—

- (a) the [Local Government Act 1993](#), or
- (b) a code of conduct adopted by a council under the [Local Government Act 1993](#), section 440(3).

**manager**, of a public official—see section 15.

**mandatory public interest disclosure**—see section 23.

**position**, of an employee, includes a band or classification of work determined under the [Government Sector Employment Act 2013](#).

**privacy contravention** means a failure, other than a trivial failure, by an agency or public official to

exercise functions in accordance with—

- (a) the *Privacy and Personal Information Protection Act 1998*, or
- (b) the *Health Records and Information Privacy Act 2002*.

**public interest disclosure**—see section 21.

**public official**—see section 14.

**Public Service agency** has the same meaning as in the *Government Sector Employment Act 2013*.

**purported public interest disclosure** means a disclosure that is—

- (a) made in compliance with section 27, and
- (b) not a mandatory public interest disclosure or a witness public interest disclosure, and
- (c) stated by the maker of the disclosure to be a public interest disclosure, whether or not it is in fact a public interest disclosure.

**reasonable management action**—see section 31(3).

**receives**, in relation to a disclosure—see section 50.

**relates to**, in relation to an agency—see section 20(3).

**return period**—see section 78(1).

**role**, of an employee, includes the duties and responsibilities of the employee.

**serious maladministration** means conduct, other than conduct of a trivial nature, of an agency or a public official relating to a matter of administration that is—

- (a) unlawful, or
- (b) unreasonable, unjust, oppressive or improperly discriminatory, or
- (c) based wholly or partly on improper motives.

**serious wrongdoing**—see section 13.

**Steering Committee** means the Public Interest Disclosures Steering Committee established by section 67.

**voluntary public interest disclosure**—see section 24.

**witness public interest disclosure**—see section 22.

## **Schedules 3-8 (Repealed)**