

# Protected Disclosures Amendment (Public Interest Disclosures) Act 2010 No 84

[2010-84]



New South Wales

## Status Information

### Currency of version

Repealed version for 2 July 2011 to 1 January 2012 (accessed 21 December 2024 at 18:23)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Repeal**

The Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 2.1.2012.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Protected Disclosures Amendment (Public Interest Disclosures) Act 2010 No 84



New South Wales

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

## 1 Name of Act

This Act is the *Protected Disclosures Amendment (Public Interest Disclosures) Act 2010*.

## 2 Commencement

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

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

### [1]-[13] (Repealed)

### [14] Sections 6A-6D

Insert after section 6:

#### 6A Steering Committee

- (1) There is established by this Act a Public Interest Disclosures Steering Committee consisting of the following members:
  - (a) the Ombudsman, who is to be the chairperson of the Steering Committee,
  - (b) the Director-General of the Department of Premier and Cabinet,
  - (c) the Auditor-General,
  - (d) the Commissioner for the Independent Commission Against Corruption,
  - (e) the Commissioner for the PIC,
  - (f) the local government investigating authority,
  - (g) the Commissioner of Police,

- (h) such other members as may be prescribed by the regulations.
- (2) The functions of the Steering Committee are:
  - (a) to provide advice to the Minister on the operation of this Act and recommendations for reform, and
  - (b) to receive, consider and provide advice to the Minister on any reports provided by the Ombudsman in the exercise of functions under section 6B or as referred to in section 31A.
- (3) A member of the Steering Committee may appoint a nominee to act in the place of the member (either generally or for a particular purpose) and may revoke any such appointment. While acting in the place of a member, the member's nominee has all the functions of the member (including the functions of chairperson in the case of the Ombudsman's nominee) and is taken to be a member.
- (4) The quorum for a meeting of the Steering Committee is 3 members of the Committee of whom 2 must be the Ombudsman and the Director-General of the Department of Premier and Cabinet (or their nominees).
- (5) The Steering Committee is to determine its own procedures.
- (6) The Ombudsman (as chairperson of the Steering Committee) is to prepare an annual report of the Steering Committee's activities and any recommendations made to the Minister during the reporting period of 12 months ending on 30 June in each year.
- (7) The annual report is to be prepared and provided to the Minister as soon as practicable after the end of the reporting period and is to be tabled by the Minister in each House of Parliament as soon as practicable after the Minister receives it.

## **6B Oversight of Act by Ombudsman**

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

under this Act,

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

**Note—**

The Ombudsman is also chairperson of the Steering Committee.

- (2) A monitoring report is to be provided once every 12 months. An audit report is to be provided whenever the Ombudsman considers it desirable to do so and at least once every 12 months.
- (3) The Ombudsman must, as soon as practicable after 30 June in each year, prepare and provide a report to Parliament on the Ombudsman's activities under this section for the preceding 12 months.
- (4) A report to Parliament under this section can be provided by being included in the Ombudsman's annual report under section 30 of the [Ombudsman Act 1974](#) or can be provided as a separate report and provided to the Presiding Officer of each House of Parliament.
- (5) Section 31AA of the [Ombudsman Act 1974](#) applies to a report to Parliament under this section as if the report were a report made or furnished under Part 4 of that Act.

## **6C Provision of information to Ombudsman for audit purposes**

- (1) For the purposes of an audit under section 6B, the Ombudsman may require the principal officer of or who constitutes a public authority:
  - (a) to give the Ombudsman a statement of information, or
  - (b) to produce to the Ombudsman any document or other thing under the person's control, or the production of which the person may, in an official

capacity, reasonably require, or

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

- (2) This section does not apply to the principal officer of the Department of Parliamentary Services, the Department of the Legislative Assembly or the Department of the Legislative Council.
- (3) A requirement under this section must be in writing, must specify or describe the information, document or thing required, and must fix a time and specify a place for compliance.
- (4) It is the duty of the principal officer of or who constitutes a public authority to comply with any requirement of the Ombudsman under this section.
- (5) A provision of any Act or law that prevents or restricts access to records or disclosure of information (other than section 22 or 23 of this Act) does not prevent a person from complying, or affect the person's duty to comply, with a requirement of the Ombudsman under this section.
- (6) Anything done by a person in compliance with a requirement of the Ombudsman under this section:
  - (a) does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and
  - (b) does not give rise to any liability for defamation or other civil liability.

## **6D Public interest disclosures policies and guidelines**

- (1) Each public authority must have a policy that provides for its procedures for receiving, assessing and dealing with protected disclosures.
- (2) The Ombudsman may adopt guidelines for the procedures of public authorities for receiving, assessing and dealing with protected disclosures. The guidelines may include a model policy that provides for those procedures.
- (3) A public authority must have regard to (but is not bound by) the Ombudsman's guidelines in formulating a policy for the purposes of this section.

### **[15]-[38] (Repealed)**

### **[39] Sections 31-31B**

Insert after section 30:

### **31 Reports to Parliament by public authorities**

- (1) Each public authority must, within 4 months after the end of each reporting year, prepare an annual report on the public authority's obligations under this Act for submission to the Minister responsible for the public authority. A copy of the report is to be provided to the Ombudsman.
- (2) An annual report under this section must be tabled in each House of Parliament by the relevant Minister as soon as practicable after it is prepared unless it is included in an annual report prepared for the purposes of the *Annual Reports (Departments) Act 1985* or the *Annual Reports (Statutory Bodies) Act 1984*.
- (3) The regulations may make provision for or with respect to:
  - (a) the information to be included in annual reports, and
  - (b) the form in which annual reports are to be prepared.
- (4) In this section, a reference to the reporting year of a public authority is a reference to:
  - (a) the financial year of the public authority for the purposes of the *Annual Reports (Departments) Act 1985* or the *Annual Reports (Statutory Bodies) Act 1984*, or
  - (b) if the public authority does not have a financial year for the purposes of either of those Acts, the year ending 30 June.

#### **31A Special report by Ombudsman**

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

**Note—**

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

### **31B Review of Commonwealth legislation**

- (1) The Steering Committee is to review any legislation of the Commonwealth that is enacted in response to the 2009 report *Whistleblower protection: A comprehensive scheme for the Commonwealth public sector* of the House of Representatives Standing Committee on Legal and Constitutional Affairs.
- (2) The review is to be conducted within 6 months after the enactment of the Commonwealth legislation (or within 6 months after the commencement of this section if the Commonwealth legislation is enacted before the commencement of this section).
- (3) The Steering Committee is to provide the Minister with a report on the outcome of the review and any recommendations for reform of this Act arising from the review.
- (4) A copy of the Steering Committee's report is to be tabled in each House of Parliament as soon as practicable after the report is provided to the Minister.

**[40]-[43] (Repealed)**

**Schedule 2 (Repealed)**