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Dated 3 May 2021



TASMANIA

PUBLIC INTEREST DISCLOSURES ACT 2002

No. 16 of 2002

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Public bodies and officers
5. Act binds Crown

PART 2 – DISCLOSURES OF IMPROPER CONDUCT AND DETRIMENTAL ACTION

6. Disclosures about improper conduct or detrimental action
7. Persons to whom disclosures may be made
- 7A. Disclosures by other persons
8. Anonymous disclosure
9. Disclosure may be made where identity of person not known

10. Disclosures cannot be made about past conduct
11. Legal professional privilege not affected
12. Disclosure to Commissioner of Police taken to be disclosure to public body

PART 3 – PROTECTION

13. Application of Part
14. Protected disclosure
15. Certain further information also protected
16. Immunity from liability
17. Confidentiality provisions do not apply
18. Liability for own conduct
19. Protection from reprisal
20. Proceedings for damages for reprisal
21. Application for injunction or order
22. Injunction or order
23. Offence to reveal confidential information
- [24. *Repealed*]
25. Certain persons continue to be protected

[PART 4 – *Repealed*]

- 26 - 29. *Repealed*

PART 4A – DISCLOSURE MADE TO INTEGRITY COMMISSION

- 29A. Action by Integrity Commission on receipt of disclosure
- 29B. Referral of disclosure to Integrity Commission
- 29C. Action by Integrity Commission on referred disclosure
- 29D. Notice of referral

PART 5 – DETERMINATION OF PUBLIC INTEREST DISCLOSURES

Division 1 – Determination by Ombudsman of public interest disclosures

30. Determination by Ombudsman of disclosure as public interest disclosure
31. Notice of determination

32. Notice of alternative procedure

Division 2 – Determination by public bodies of public interest disclosures

33. Determination by public body of disclosure as public interest disclosure

34. Procedure where public body determines disclosure to be public interest disclosure

35. Procedure where public body determines disclosure not to be public interest disclosure

[36. *Repealed*]

37. Determination by Ombudsman

PART 6 – INVESTIGATION OF PUBLIC INTEREST DISCLOSURES BY THE OMBUDSMAN

Division 1 – Functions of Ombudsman

38. Functions of Ombudsman under this Act

Division 2 – Requirement to investigate

39. Duty to investigate

39A. Investigation to be completed as soon as practicable

40. Matters that do not have to be investigated

41. Referral of matters for investigation otherwise than under this Act

42. Referral of public interest disclosures to relevant public body for investigation

43. Provision of information by Ombudsman

44. Notice of referral

Division 3 – Investigation by Ombudsman

45. Procedures for investigation

46. Notice of investigation

47. Investigation to be private

48. Hearing not required

49. Taking of evidence

50. Disclosure of privileged or confidential information to Ombudsman

51. Deliberations of Ministers and Parliamentary committees not to be disclosed
52. Power to enter premises
53. Consultation and comment
54. Obstruction
55. Opportunity to be heard before adverse report

Division 4 – Action on completion of investigation

56. Report on investigation
57. Notice of implementation of recommendation
58. Report to Parliament
59. Person who made disclosure to be informed

PART 7 – INVESTIGATION OF PUBLIC INTEREST DISCLOSURES BY PUBLIC BODIES

Division 1 – Establishment of procedures

60. Public body to establish procedures that comply with guidelines and standards
61. Availability of procedures
62. Review of procedures
- 62A. Role of principal officer
- 62B. Delegation by principal officer

Division 2 – Requirement to investigate

63. Duty to investigate
64. Matters that do not have to be investigated
65. Decision by public body not to investigate
- [66. *Repealed*]
67. Determination by Ombudsman
68. Referral to Ombudsman by public body
69. Ombudsman may take over investigation
70. Provision of information to Ombudsman
71. Ombudsman's powers in relation to certain investigations
72. Notice of referral

Division 3 – Investigation by public body

- 73. Investigation to be in accordance with procedures
- 74. Information about progress of investigation

Division 4 – Action on investigation

- 75. Action to be taken by public body
- 76. Report on investigation
- 77. Report to person making disclosure
- 77A. Investigations to be completed within 6 months

PART 8 – INVESTIGATION OF DISCLOSURES ABOUT MEMBERS OF PARLIAMENT

- 78. Referral of disclosure to Ombudsman
- 79. Determination of disclosure as public interest disclosure
- 80. Notice of determination
- 81. Investigation by Ombudsman
- 82. Investigations to be conducted in accordance with Division 3 of Part 6
- 83. Report on investigation

PART 9 – ANNUAL REPORTS AND OTHER REPORTS

- 84. Annual report by Ombudsman
- 85. Other reports by Ombudsman
- 86. Annual reports by public body

PART 10 – GENERAL

- 87. Offence to make false disclosure
- 88. Protection of Ombudsman and officers
- 89. Evidence not admissible
- 90. Exemption from *Right to Information Act 2009*
- 91. Regulations
- 92. Administration of Act



PUBLIC INTEREST DISCLOSURES ACT 2002

No. 16 of 2002

An Act to encourage and facilitate disclosures of improper conduct by public officers and public bodies, to protect persons making those disclosures and others from reprisals, to provide for the matters disclosed to be properly investigated and dealt with to provide all parties involved in those disclosures with natural justice and for other purposes

[Royal Assent 25 June 2002]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Public Interest Disclosures Act 2002*.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 2

Part 1 – Preliminary

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

(1) In this Act, unless the contrary intention appears –

agency means a State Service Agency and includes the Police Service;

contractor means –

- (a) a person who at any time has entered into a contract with a public body for the supply of goods or services to, or on behalf of, the public body; or
- (b) an employee of the contractor; or
- (c) a subcontractor engaged by the contractor to fulfil all or part of a contract with a public body for the supply of goods or services to, or on behalf of, the public body;

corrupt conduct means –

- (a) conduct of a person (whether or not a public officer) that adversely affects, or could adversely affect, either directly or indirectly, the honest

Public Interest Disclosures Act 2002
Act No. 16 of 2002

Part 1 – Preliminary

s. 3

performance of a public officer's
or public body's functions; or

- (b) conduct of a public officer that amounts to the performance of any of his or her functions as a public officer dishonestly or with inappropriate partiality; or
- (c) conduct of a public officer, a former public officer or a public body that amounts to a breach of public trust; or
- (d) conduct of a public officer, a former public officer or a public body that amounts to the misuse of information or material acquired in the course of the performance of their functions as such (whether for the benefit of that person or body or otherwise); or
- (e) a conspiracy or attempt to engage in conduct referred to in paragraph (a), (b), (c) or (d);

councillor has the same meaning as in the
Local Government Act 1993;

council-owned company means a company incorporated under the Corporations Act that is controlled by one or more councils or another company that is so controlled;

detrimental action includes –

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 3

Part 1 – Preliminary

- (a) action causing injury, loss or damage; and
- (b) intimidation or harassment; and
- (c) discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action; and
- (d) threats of detrimental action;

disclosed matter means a matter disclosed in a disclosure determined under Part 5 or 8 to be a public interest disclosure;

improper conduct means –

- (a) conduct that constitutes an illegal or unlawful activity; or
- (b) corrupt conduct; or
- (c) conduct that constitutes maladministration; or
- (d) conduct that constitutes professional misconduct; or
- (e) conduct that constitutes a waste of public resources; or
- (f) conduct that constitutes a danger to public health or safety or to both public health and safety; or

Public Interest Disclosures Act 2002
Act No. 16 of 2002

Part 1 – Preliminary

s. 3

-
- (g) conduct that constitutes a danger to the environment; or
 - (h) misconduct, including breaches of applicable codes of conduct; or
 - (i) conduct that constitutes detrimental action against a person who makes a public interest disclosure under this Act –

that is serious or significant as determined in accordance with guidelines issued by the Ombudsman;

Integrity Commission has the same meaning as in the *Integrity Commission Act 2009*;

Joint Committee has the same meaning as in the *Integrity Commission Act 2009*;

principal officer means –

- (a) the Secretary of a State Service Agency; or
- (b) the general manager of a council, but only in relation to the employees of that council; or
- (c) the chief executive officer of a State-owned company or council-owned company; or
- (d) the chief executive officer of a Government Business Enterprise; or

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 3

Part 1 – Preliminary

(e) the principal administrative officer of a public body; or

(f) such other person as may be prescribed;

protected disclosure has the meaning given to it by section 14;

Public Accounts Committee means the Parliamentary Standing Committee of Public Accounts established under the *Public Accounts Committee Act 1970*;

public interest disclosure officer means a person appointed as a public interest disclosure officer under section 62A;

public body means a public body referred to in section 4;

public officer means a public officer referred to in section 4;

relevant Minister means –

(a) in relation to a public body, the Minister responsible for the public body; or

(b) in relation to a public officer, the Minister responsible for that public officer;

State-owned company means a company incorporated under the Corporations Act that is controlled by the Crown, a Government Business Enterprise or a

Public Interest Disclosures Act 2002
Act No. 16 of 2002

Part 1 – Preliminary

s. 4

statutory authority or another company that is so controlled;

statutory authority means a body or authority, whether incorporated or not, that is established or constituted by or under an Act or under the Royal Prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another statutory authority but does not include an agency.

- (2) For the purposes of this Act, the general manager of a council is taken to be the chief executive officer of a public body in relation to an employee of that council.

4. Public bodies and officers

- (1) Subject to subsection (3), the following bodies and authorities are public bodies for the purposes of this Act:
- (a) the Parliament of Tasmania;
 - (b) a State Service Agency;
 - (c) the Police Service;
 - (d) a council;
 - (e) a Government Business Enterprise;
 - (f) a State-owned Company;

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 4

Part 1 – Preliminary

- (g) a council-owned company;
 - (ga) the University of Tasmania;
 - (h) a body or authority, whether incorporated or not, whose members or a majority of whose members are appointed by the Governor or a Minister;
 - (i) any other prescribed body or authority, whether incorporated or not –
 - (i) to which any money is paid by way of appropriation from the Public Account; or
 - (ii) over which the Government or a Minister exercises control.
- (2) Subject to subsection (3), the following persons are public officers for the purposes of this Act:
- (a) a Member of Parliament;
 - (b) a councillor;
 - (c) a member, officer or employee of a public body;
 - (d) a member of the governing body of a public body;
 - (e) an employee of a council;
 - (f) any person performing functions under the *Parliamentary Privilege Act 1898*;

Public Interest Disclosures Act 2002
Act No. 16 of 2002

Part 1 – Preliminary

s. 4

- (g) a person employed in an office of a Minister, Parliamentary Secretary or other Member of Parliament whether in accordance with the *State Service Act 2000*, *Parliamentary Privilege Act 1898* or otherwise;
 - (h) any person performing functions under the *Governor of Tasmania Act 1982*;
 - (i) a person appointed to an office by the Governor or a Minister under an Act.
- (3) The following bodies are not public bodies for the purposes of this Act:
- (a) a court;
 - (b) a tribunal;
 - (c) the Tasmanian Industrial Commission;
 - (d) the Integrity Commission;
 - (e) any other prescribed body.
- (4) The following persons are not public officers for the purposes of this Act:
- (a) the Governor of Tasmania;
 - (b) a judge of the Supreme Court;
 - (c) the Associate Judge of the Supreme Court;
 - (d) a magistrate of the Magistrates Court;
 - (e) the Director of Public Prosecutions;

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 5

Part 1 – Preliminary

(f) any other prescribed person.

5. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

**PART 2 – DISCLOSURES OF IMPROPER CONDUCT
AND DETRIMENTAL ACTION**

6. Disclosures about improper conduct or detrimental action

- (1) A public officer who believes that another public officer or a public body –
- (a) has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer or public body; or
 - (b) has taken, is taking or proposes to take detrimental action in contravention of section 19 –

may disclose that improper conduct or detrimental action in accordance with this Part.

- (2) A contractor who believes that the public body with which the contractor has entered into a contract –
- (a) has engaged, is engaging or proposes to engage in improper conduct in its capacity as a public body; or
 - (b) has taken, is taking or proposes to take detrimental action in contravention of section 19 –

may disclose that improper conduct or detrimental action in accordance with this Part.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 7

Part 2 – Disclosures of improper conduct and detrimental action

7. Persons to whom disclosures may be made

- (1) Subject to this section, a disclosure under this Part may be made to –
 - (a) the Ombudsman; or
 - (b) if the disclosure relates to a member, officer or employee of a public body other than the Police Service, that public body, the Integrity Commission or the Ombudsman; or
 - (c) if the disclosure relates to a member, officer or employee of a public body that is a State Service Agency, that public body, the Integrity Commission or the Ombudsman; or
 - (d) the Integrity Commission.
- (2) A disclosure that relates to a member of the Police Service, other than the Commissioner of Police, is to be made to the Commissioner of Police.
- (3) A disclosure that relates to the Commissioner of Police is to be made to the Ombudsman.
- (4) A disclosure that relates to a member of Parliament is to be made to –
 - (a) the President of the Legislative Council, if the member is a member of the Legislative Council; or

Public Interest Disclosures Act 2002
Act No. 16 of 2002

-
- (b) the Speaker of the House of Assembly, if the member is a member of the House of Assembly.
- (5) A disclosure that relates to a councillor is to be made to the Ombudsman.
- (5A) A disclosure that relates to persons employed under the provisions of the *Parliamentary Privilege Act 1898* is to be made to the Ombudsman or the Integrity Commission.
- (5B) A disclosure that relates to the Auditor-General is to be made to the chairman of the Public Accounts Committee.
- (5C)
- (5D) A disclosure that relates to the Ombudsman is to be made to the Joint Committee.
- (5E) A disclosure that relates to a person employed in an office of a Minister, Parliamentary Secretary or other Member of Parliament is to be made to the Ombudsman.
- (6) A disclosure –
- (a) may be made orally or in writing; and
- (b) is to be made in accordance with prescribed procedure.
- (7) A disclosure made in relation to a member of Parliament is not to be taken to be a contempt of Parliament.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 7A

Part 2 – Disclosures of improper conduct and detrimental action

7A. Disclosures by other persons

A person to whom a disclosure may be made under this Part may, if the person considers that it would be in the public interest to do so, treat any other person who is not a public officer or a contractor as a contractor for the purposes of this Act.

8. Anonymous disclosure

A person to whom a disclosure may be made under this Part may receive an anonymous disclosure if the person receiving the disclosure is satisfied that the disclosure is being made by a public officer or a contractor.

9. Disclosure may be made where identity of person not known

A person may make a disclosure under this Part even if the person cannot identify the person or body to whom or to which the disclosure relates.

10. Disclosures cannot be made about past conduct

A person may not make a disclosure under this Part about conduct that has occurred more than 3 years before the commencement of this Act.

11. Legal professional privilege not affected

Nothing in this Act affects the law relating to legal professional privilege.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

Part 2 – Disclosures of improper conduct and detrimental action

s. 12

12. Disclosure to Commissioner of Police taken to be disclosure to public body

A person who makes a disclosure to the Commissioner of Police in accordance with this Part is taken to have made that disclosure to a public body in accordance with this Part and in such a case the Commissioner of Police is taken to be a public body for the purposes of this Act.

PART 3 – PROTECTION

13. Application of Part

- (1) This Part only applies to a protected disclosure.
- (2) This Part does not apply to a person who has been convicted of an offence against section 87 in relation to the disclosure that is the subject of the conviction.

14. Protected disclosure

A protected disclosure is a disclosure made in accordance with Part 2.

15. Certain further information also protected

- (1) If a person who makes a disclosure in accordance with Part 2 provides further information relating to that disclosure to a person or body specified in subsection (2), that further information is to be treated as if it were a protected disclosure for the purposes of this Part.
- (2) Subsection (1) applies to further information provided to –
 - (a) the President of the Legislative Council;
or
 - (b) the Speaker of the House of Assembly;
or
 - (c) the Ombudsman; or

Public Interest Disclosures Act 2002
Act No. 16 of 2002

Part 3 – Protection

s. 16

- (d)
 - (e) the Commissioner of Police; or
 - (ea) the chairman of the Public Accounts Committee; or
 - (eb) the Joint Committee; or
 - (f) a public body.
- (3) If a person provides further information, relating to a matter already determined to be a public interest disclosure, through a process under this Act, that further information is to be treated as if it were a protected disclosure for the purposes of this Part.

16. Immunity from liability

A person who makes a protected disclosure is not subject to any civil or criminal liability or any liability arising by way of administrative process (including disciplinary action) for making the protected disclosure.

17. Confidentiality provisions do not apply

- (1) Without limiting section 16, a person who makes a protected disclosure does not by doing so –
 - (a) commit an offence under a provision of any other Act that imposes a duty to maintain confidentiality with respect to a matter or any other restriction on the disclosure of information; or

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 18

Part 3 – Protection

- (b) breach an obligation by way of oath or rule of law or practice or under an agreement requiring him or her to maintain confidentiality or otherwise restricting the disclosure of information with respect to a matter.
- (2) Subsection (1) does not apply to a person who makes a disclosure of information to which a protected disclosure relates to a person other than the person to whom the disclosure was originally made, except where the further disclosure of information is made in accordance with this Act.

18. Liability for own conduct

Despite anything to the contrary in this Part, a person's liability for his or her own conduct is not affected by the person's disclosure of that conduct under this Act.

19. Protection from reprisal

- (1) A person must not take detrimental action against a person in reprisal for a protected disclosure.

Penalty: Fine not exceeding 240 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (2) A person takes detrimental action in reprisal for a protected disclosure if –

Public Interest Disclosures Act 2002
Act No. 16 of 2002

Part 3 – Protection

s. 20

- (a) the person takes or threatens to take the action because –
 - (i) a person has made, or intends to make, a protected disclosure; or
 - (ii) the person believes that a person has made or intends to make the protected disclosure; or
 - (b) the person incites or permits another person to take or threaten to take the action for either of those reasons.
- (3) In determining whether a person takes detrimental action in reprisal, it is irrelevant whether or not a reason referred to in subsection (2) is the only or dominant reason as long as it is a substantial reason.

20. Proceedings for damages for reprisal

- (1) A person who takes detrimental action against a person in reprisal for a protected disclosure is liable in damages to that person.
- (2) The damages may be recovered in proceedings as for a tort in any court of competent jurisdiction.
- (3) Any remedy that may be granted by a court with respect to a tort, including exemplary damages, may be granted by a court in proceedings under this section.
- (4) The right of a person to bring proceedings for damages does not affect any other right or

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 21

Part 3 – Protection

remedy available to the person arising from the detrimental action.

21. Application for injunction or order

A person who believes that detrimental action has been taken or may be taken against him or her in reprisal for a protected disclosure may apply to the Supreme Court for –

- (a) an order requiring the person who has taken the detrimental action to remedy that action; or
- (b) an injunction.

22. Injunction or order

(1) If, on receipt of an application under section 21, the Supreme Court is satisfied that a person has taken or intends to take detrimental action against a person in reprisal for a protected disclosure, the Court may –

- (a) order the person who took the detrimental action to remedy that action; or
- (b) grant an injunction in any terms the Court considers appropriate.

(2) The Supreme Court, pending the final determination of an application under section 21, may –

Public Interest Disclosures Act 2002
Act No. 16 of 2002

Part 3 – Protection

s. 23

- (a) make an interim order in the terms of subsection (1)(a); or
- (b) grant an interim injunction.

23. Offence to reveal confidential information

- (1) A person who obtains or receives information in the course of or as a result of a protected disclosure or the investigation of a disclosed matter under this Act must not disclose that information except for the purposes of –
 - (a) the exercise of the functions under this Act of the President of the Legislative Council, the Speaker of the House of Assembly, the Ombudsman, the chairman of the Public Accounts Committee, the Integrity Commission or a public body; or
 - (b) any report or recommendation to be made under this Act; or
 - (c) any report referred to in Part 9; or
 - (ca) the exercise of the functions of a Commission under the *Commissions of Inquiry Act 1995*; or
 - (d) any proceedings in relation to an offence against section 54 or 87 or this section or in relation to section 27 of the *Commissions of Inquiry Act 1995*.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 24

Part 3 – Protection

Penalty: Fine not exceeding 60 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (2) The Ombudsman or a public body must not in a report or recommendation under this Act or a report referred to in Part 9 disclose particulars likely to lead to the identification of a person who made a protected disclosure.
- (3) The Ombudsman or a public body must not in a report referred to in Part 9 disclose particulars likely to lead to the identification of a person against whom a protected disclosure is made.

24.

25. Certain persons continue to be protected

- (1) If a public officer who makes a protected disclosure ceases to be a public officer after making the protected disclosure, the provisions of this Act apply to the public officer in relation to the protected disclosure as if the public officer continued to be a public officer.
- (2) If a contractor, either before or after making a protected disclosure, ceases to hold or be a party to a contract with the public body, the provisions of this Act apply to the contractor in relation to the protected disclosure as if the contract between the contractor and the public body were still in force.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

Part 4 –

s. 26

PART 4 –

26 - 29.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 29A

Part 4A – Disclosure made to Integrity Commission

**PART 4A – DISCLOSURE MADE TO INTEGRITY
COMMISSION**

29A. Action by Integrity Commission on receipt of disclosure

If a person makes a disclosure to the Integrity Commission in accordance with Part 2, the Integrity Commission may –

- (a) deal with the disclosure under the *Integrity Commission Act 2009*; or
- (b) refer the disclosure to the Ombudsman or a public body, as the case may require, to be dealt with as if it were a disclosure made to the Ombudsman or public body in accordance with Part 2.

29B. Referral of disclosure to Integrity Commission

If a person makes a disclosure to the Ombudsman or a public body in accordance with Part 2 and the Ombudsman or public body considers that the disclosure relates to misconduct as defined in the *Integrity Commission Act 2009*, the Ombudsman or public body may refer the disclosure to the Integrity Commission.

29C. Action by Integrity Commission on referred disclosure

If a disclosure is referred to the Integrity Commission by the Ombudsman or a public

Public Interest Disclosures Act 2002
Act No. 16 of 2002

Part 4A – Disclosure made to Integrity Commission

s. 29D

body under section 29B, the Integrity Commission may –

- (a) deal with the disclosure under the *Integrity Commission Act 2009*; or
- (b) refer the disclosure to the Ombudsman or public body, as the case may require, to be dealt with as if it were a disclosure made to the Ombudsman or public body in accordance with Part 2.

29D. Notice of referral

- (1) If the Ombudsman or a public body refers a disclosure to the Integrity Commission under this Part, the Ombudsman or public body must, within a reasonable time, notify the person who made the disclosure of that referral.
- (2) If a disclosure is referred to the Integrity Commission under section 29B, the Integrity Commission must, within a reasonable time, notify the referring body and the person who made the disclosure of its decision made under section 29C.
- (3) This section does not apply in respect of a person who made an anonymous disclosure.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 30

Part 5 – Determination of public interest disclosures

PART 5 – DETERMINATION OF PUBLIC INTEREST DISCLOSURES

Division 1 – Determination by Ombudsman of public interest disclosures

30. Determination by Ombudsman of disclosure as public interest disclosure

- (1) If a person makes a disclosure to the Ombudsman in accordance with Part 2, the Ombudsman must, within a reasonable time after receiving the disclosure, determine whether the disclosure is a public interest disclosure.
- (2) In making a determination under subsection (1), the Ombudsman must be satisfied that the disclosure shows or tends to show that a public officer or public body –
 - (a) has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer or public body; or
 - (b) has taken, is taking or proposes to take detrimental action in contravention of section 19.
- (3)

31. Notice of determination

- (1) The Ombudsman must, within a reasonable time, notify the person who made the disclosure of the

Public Interest Disclosures Act 2002
Act No. 16 of 2002

determination under section 30 in respect of the disclosure.

- (2) This section does not apply in respect of a person who made an anonymous disclosure.

32. Notice of alternative procedure

- (1) If the Ombudsman –
- (a) determines that a disclosure is not a public interest disclosure; and
 - (b) considers that the disclosure could constitute a complaint under the *Ombudsman Act 1978* –

the Ombudsman must notify the person who made the disclosure of the person's right to have the disclosure dealt with as a complaint under that Act.

- (2) A person who is given notice under subsection (1) may by notice in writing to the Ombudsman request that the disclosure be dealt with as a complaint under the *Ombudsman Act 1978*.
- (3) A person must make a request under subsection (2) within 28 days of being given notice under subsection (1).
- (4) If under this section a person requests that a disclosure be dealt with as a complaint under the *Ombudsman Act 1978*, the disclosure is taken to be a complaint made to the Ombudsman under that Act.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 33

Part 5 – Determination of public interest disclosures

Division 2 – Determination by public bodies of public interest disclosures

33. Determination by public body of disclosure as public interest disclosure

- (1) If a person makes a disclosure to a public body in accordance with Part 2, the public body must, within 45 days after receiving the disclosure, determine whether the disclosure is a public interest disclosure.
- (2) In making a determination under subsection (1), the public body must be satisfied that the disclosure shows or tends to show that the public officer to whom the disclosure relates –
 - (a) has engaged, is engaging or proposes to engage in improper conduct in his or her capacity as a public officer; or
 - (b) has taken, is taking or proposes to take detrimental action in contravention of section 19.
- (3)
- (4) This section does not apply to a disclosure that has been referred to the Integrity Commission under Part 4A and that the Integrity Commission has decided to deal with under the *Integrity Commission Act 2009*.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

34. Procedure where public body determines disclosure to be public interest disclosure

- (1) If, under section 33, a public body determines that a disclosure is a public interest disclosure, the public body must, within 14 days –
 - (a) notify the person who made the disclosure of that determination; and
 - (b) notify the Ombudsman of its determination.
- (2) A public body is not required to notify under this section a person who made an anonymous disclosure.

35. Procedure where public body determines disclosure not to be public interest disclosure

- (1) If, under section 33, a public body determines that a disclosure is not a public interest disclosure, the public body must, within 14 days –
 - (a) notify the person who made the disclosure of that determination; and
 - (b) notify the Ombudsman that the public body has determined that the disclosure is not a public interest disclosure.
- (2) On receipt of a notification that a public body has determined that a disclosure is not a public interest disclosure, the Ombudsman must review that determination.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 36

Part 5 – Determination of public interest disclosures

- (3) Subsection (1)(a) does not apply in respect of a person who made an anonymous disclosure.

36.

37. Determination by Ombudsman

- (1) Division 1 applies to a disclosure referred to the Ombudsman under this Division as if the disclosure had been made to the Ombudsman.
- (2) The Ombudsman must, within a reasonable time, notify the public body that referred the disclosure under this Division of the determination as to whether the disclosure is a public interest disclosure.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

**PART 6 – INVESTIGATION OF PUBLIC INTEREST
DISCLOSURES BY THE OMBUDSMAN**

Division 1 – Functions of Ombudsman

38. Functions of Ombudsman under this Act

- (1) The Ombudsman's functions under this Act are –
- (a) to determine whether disclosures received or referred to the Ombudsman are public interest disclosures; and
 - (b) to investigate matters disclosed in public interest disclosures; and
 - (c) to prepare and publish guidelines and standards for the procedures to be followed by public bodies in relation to –
 - (i) disclosures under Part 2; and
 - (ii) investigations under Part 7; and
 - (iii) the protection of persons from reprisals by public bodies or members, officers or employees of public bodies because of protected disclosures; and
 - (iv) the application of natural justice to all parties involved in an investigation of a public interest disclosure; and

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 39

Part 6 – Investigation of public interest disclosures by the Ombudsman

- (d) to approve procedures developed by public bodies in accordance with the guidelines and standards, and review those procedures at least once in each 3-year period; and
 - (e) to receive notification of all public interest disclosures made internally to public bodies; and
 - (f) to prepare and publish guidelines and standards for the purpose of determining whether improper conduct is serious or significant; and
 - (g) to monitor the progress of investigations by public bodies under Part 7; and
 - (h) to provide advice to public bodies on this Act; and
 - (i) any other function conferred on the Ombudsman by or under this Act.
- (2) The Ombudsman may from time to time amend the guidelines and standards prepared and published under subsection (1).

Division 2 – Requirement to investigate

39. Duty to investigate

Subject to this Division, the Ombudsman must investigate every disclosure the Ombudsman has determined is a public interest disclosure.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

39A. Investigation to be completed as soon as practicable

- (1) The Ombudsman must complete investigations of disclosures made to him or her as soon as practicable after determining the disclosure is a public interest disclosure, unless a decision is made not to investigate under section 40, and must report to the Joint Committee any investigation which extends beyond 12 months.
- (2) The report to the Joint Committee is to include details of the type of improper conduct, details of progress to the date of the report and the reasons why the investigation is not completed, but must not identify the parties to the investigation.

40. Matters that do not have to be investigated

- (1) The Ombudsman may decide not to investigate a disclosed matter –
 - (a) if in the opinion of the Ombudsman the disclosure is trivial, vexatious, misconceived or lacking in substance; or
 - (b) if the subject matter of the disclosure has already been adequately dealt with by the Ombudsman or a public body, statutory authority, Commonwealth statutory authority, commission, court or tribunal; or
 - (c) if the person making the disclosure has commenced proceedings in a commission, court or tribunal in relation

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 40

Part 6 – Investigation of public interest disclosures by the Ombudsman

to the same matter, and that commission, court or tribunal has power to order remedies similar to those available under this Act; or

- (d) if the person making the disclosure had knowledge for more than 12 months of the disclosed matter before making the disclosure and failed to give a satisfactory explanation for the delay in making the disclosure; or
- (e) if the disclosure relates solely to the personal interests of the person making the disclosure; or
- (f) if the disclosure is based on false or misleading information; or
- (g) if the matter which is the subject of the disclosure is a matter in respect of which a decision has been made that the matter –
 - (i) is not a public interest disclosure; or
 - (ii) is a matter which does not have to be investigated under this Act –

and the additional disclosure does not provide significant or substantial new information.

- (2) The Ombudsman must –

Public Interest Disclosures Act 2002
Act No. 16 of 2002

- (a) within a reasonable time, notify the person making the disclosure of his or her decision under subsection (1) not to investigate the disclosed matter; and
- (b) give reasons for that decision.

41. Referral of matters for investigation otherwise than under this Act

The Ombudsman may refer a disclosed matter to the Commissioner of Police, the Auditor-General, a Commission under the *Commissions of Inquiry Act 1995*, a prescribed public body or the holder of a prescribed office to investigate if the Ombudsman considers it appropriate to do so.

42. Referral of public interest disclosures to relevant public body for investigation

- (1) Subject to subsection (2), the Ombudsman may refer a disclosed matter to a public body to investigate if –
 - (a) the matter relates to a member, officer or employee of the public body; and
 - (b) the Ombudsman considers it appropriate to do so.
- (2) Part 7 applies to the investigation of a matter referred to a public body under this section.
- (3) Nothing in this section limits the operation of section 41.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 43

Part 6 – Investigation of public interest disclosures by the Ombudsman

43. Provision of information by Ombudsman

The Ombudsman may give to a person or body to whom or which a matter is referred under this Division for investigation any information that the Ombudsman has in respect of the matter.

44. Notice of referral

If the Ombudsman refers a disclosed matter to a person or body under this Division to investigate, the Ombudsman must give notice of that referral to the person who made the disclosure unless it was an anonymous disclosure.

Division 3 – Investigation by Ombudsman

45. Procedures for investigation

Subject to this Part, the Ombudsman may regulate his or her procedures on an investigation of a disclosed matter in any manner that he or she thinks fit.

46. Notice of investigation

- (1) Before conducting an investigation of a disclosed matter, the Ombudsman must in writing inform the relevant person or body listed in subsection (2) of his or her intention to do so.
- (2) For the purposes of subsection (1), information must be given to –

Public Interest Disclosures Act 2002
Act No. 16 of 2002

- (a) if the disclosed matter relates to a public body or public officer, either the relevant Minister or the principal officer of the public body; or
- (b) if the disclosed matter relates to the mayor of a council, the relevant Minister; or
- (c) if the disclosed matter relates to a councillor (other than the mayor), the mayor and the relevant Minister; or
- (d) if the disclosed matter relates to the general manager of a council –
 - (i) the relevant Minister; or
 - (ii) the mayor of that council and a senior officer of that council nominated by that council; or
- (e) if the disclosed matter relates to any other employee of a council, the mayor and the general manager of the relevant council; or
- (f) if the disclosed matter relates to a person performing functions under the *Parliamentary Privilege Act 1898* –
 - (i) in the House of Assembly, the Speaker of the House; and
 - (ii) in the Legislative Council, the President of the Council; or

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 47

Part 6 – Investigation of public interest disclosures by the Ombudsman

- (g) if the disclosed matter relates to a person employed in an office of a Minister, Parliamentary Secretary or other Member of Parliament, whether in accordance with the *State Service Act 2000*, *Parliamentary Privilege Act 1898* or otherwise, the Minister administering this Act.

47. Investigation to be private

The investigation by the Ombudsman of a disclosed matter is to be conducted in private.

48. Hearing not required

The Ombudsman is not required to hold a hearing for the purposes of an investigation of a disclosed matter.

49. Taking of evidence

- (1) Subject to this Part, the Ombudsman may obtain information from any person and in any manner he or she thinks fit for the purposes of an investigation of a disclosed matter.
- (2) Except as provided by this Act, section 8 and Part 3 of the *Commissions of Inquiry Act 1995* apply to an investigation carried out by the Ombudsman as if –
 - (a) the Ombudsman were a Commission established under section 4 of that Act; and

Public Interest Disclosures Act 2002
Act No. 16 of 2002

- (b) the investigation were the inquiry being conducted by that Commission under that Act.
- (3) For the purpose of an investigation of a disclosed matter, the Ombudsman may take a statutory declaration from any witness or other person.

50. Disclosure of privileged or confidential information to Ombudsman

- (1) An obligation to maintain confidentiality or any other restriction on the disclosure of information obtained by or furnished to persons in the service of the Crown or any public body that is imposed by any Act, oath or rule of law or practice, or under an agreement, does not apply to the disclosure of information necessary for the purposes of an investigation by the Ombudsman of a disclosed matter.
- (2) The Crown is not, in relation to an investigation by the Ombudsman of a disclosed matter, entitled to any privilege in respect of the production of documents or the giving of evidence that is allowed by law in legal proceedings.
- (3) Subject to subsections (1) and (2), a person cannot be compelled, for the purposes of an investigation by the Ombudsman of a disclosed matter, to produce any document or give any evidence that the person could not be compelled to produce or give in proceedings before a court.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 51

Part 6 – Investigation of public interest disclosures by the Ombudsman

51. Deliberations of Ministers and Parliamentary committees not to be disclosed

- (1) A person is not required or authorised by this Part to furnish any information or answer any question that relates to –
- (a) any deliberation or decision of the Cabinet; or
 - (b) the deliberations of any committee consisting of members of Parliament if the committee is formed for the purpose of advising Ministers in respect of their deliberations; or
 - (c) any deliberations –
 - (i) of a committee consisting of members of Parliament established by resolution of either the Legislative Council or the House of Assembly, or resolution of both the Legislative Council and the House of Assembly; or
 - (ii) of a Parliamentary Standing Committee established under any Act.
- (2) A person is not required or authorised by this Part to provide or inspect a document that contains information that is exempt under section 26 of the *Right to Information Act 2009*.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

52. Power to enter premises

- (1) For the purpose of conducting an investigation of a disclosed matter, the Ombudsman or any officer of the Ombudsman authorised by the Ombudsman for that purpose may at any reasonable time –
 - (a) enter any premises used or occupied by a public body in its capacity as a public body or by a public officer in his or her capacity as a public officer; and
 - (b) inspect those premises or anything for the time being in them or on them.
- (2) The powers conferred by subsection (1) to enter premises used or occupied by a public body or public officer are not to be exercised unless prior notice of the intention to do so has been given in writing to either the relevant Minister or the chief executive officer of the public body.
- (3) The premises referred to in this section do not include a private dwelling.

53. Consultation and comment

If, in the course of an investigation of a disclosed matter, it appears to the Ombudsman that there may be grounds for making a report adverse to a public body, a public officer or a councillor, the Ombudsman must, before making the report, give an opportunity to comment on the matter to –

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 54

Part 6 – Investigation of public interest disclosures by the Ombudsman

- (a) in the case of a public body or public officer, either the relevant Minister or the chief executive officer of the public body; or
- (b) in the case of a councillor, either the relevant Minister or the mayor of the relevant council.

54. Obstruction

A person must not –

- (a) without lawful excuse, wilfully obstruct, hinder or resist the Ombudsman in the exercise of the Ombudsman's powers under this Part; or
- (b) without lawful excuse, refuse to or wilfully fail to comply with any lawful requirement of the Ombudsman under this Part; or
- (c) make a statement the person knows to be false or misleading in a material respect to the Ombudsman in the course of an investigation under this Part; or
- (d) knowingly mislead or attempt to mislead the Ombudsman in the course of an investigation under this Part.

Penalty: Fine not exceeding 240 penalty units or imprisonment for a term of 2 years, or both.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

55. Opportunity to be heard before adverse report

The Ombudsman is not, in any report under this Part or Part 8, to make any comment adverse to any person unless that person has been given an opportunity of being heard in the matter and their defence is fairly set out in the report.

Division 4 – Action on completion of investigation

56. Report on investigation

- (1) On the completion of an investigation of a disclosed matter the Ombudsman –
 - (a) must report the findings of the investigation to the relevant person; and
 - (b) may make recommendations as to the action to be taken as a result of the investigation.
- (2) For the purposes of subsection (1), the relevant person is –
 - (a) in the case of a public body or public officer, either the relevant Minister or the principal officer of the public body; or
 - (b) in the case of the mayor of a council, the relevant Minister; or
 - (c) in the case of a councillor (other than the mayor), the mayor and the relevant Minister; or

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 56

Part 6 – Investigation of public interest disclosures by the Ombudsman

- (d) in the case of the general manager of a council –
 - (i) the relevant Minister; or
 - (ii) the mayor of that council and a senior officer of that council nominated by that council; or
 - (e) in the case of any other employee of a council, the mayor and the general manager of the relevant council; or
 - (f) in the case of a person performing functions under the *Parliamentary Privilege Act 1898* –
 - (i) in the House of Assembly, the Speaker of the House; and
 - (ii) in the Legislative Council, the President of the Council; or
 - (g) in the case of a person employed in an office of a Minister, Parliamentary Secretary or other Member of Parliament, whether in accordance with the *State Service Act 2000*, *Parliamentary Privilege Act 1898* or otherwise, the Minister administering this Act.
- (3) Recommendations under subsection (1) may include –

Public Interest Disclosures Act 2002
Act No. 16 of 2002

- (a) a recommendation that the disclosed matter be referred to an appropriate authority for further consideration; and
- (b) a recommendation that action be taken to remedy any harm or loss arising from the conduct; and
- (c) a recommendation that action be taken to prevent the conduct from continuing or occurring in the future.

57. Notice of implementation of recommendation

If the Ombudsman makes a recommendation in a report to a person under section 56, the Ombudsman may request that person to notify the Ombudsman within a specified time –

- (a) of the steps that have been, or are proposed to be, taken to give effect to the recommendation; or
- (b) if no steps have been or are proposed to be taken, the reasons for this.

58. Report to Parliament

If it appears to the Ombudsman that insufficient steps have been taken within a reasonable time after making a report and recommendations under section 56 in relation to a public body, public officer or councillor, the Ombudsman, after considering any comments of the relevant Minister, the chief executive officer of the public body or the mayor of the relevant council (as the

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 59

Part 6 – Investigation of public interest disclosures by the Ombudsman

case requires), may, as the Ombudsman thinks fit, cause to be laid before each House of Parliament a report on any matter to which the report, recommendations and comments (if any) relate.

59. Person who made disclosure to be informed

- (1) If the Ombudsman investigates a disclosed matter or takes any other action under this Part in respect of a disclosed matter, the Ombudsman must, within a reasonable time after the completion of the investigation, inform the person who made the disclosure of the result of the investigation or other action.
- (2) The information may be provided in the manner that the Ombudsman thinks fit.
- (3) If it appears to the Ombudsman that insufficient steps have been taken within a reasonable time after making a report and recommendations under section 56, the Ombudsman must inform the person who made the disclosure of the recommendations, making any comments on them that he or she thinks appropriate.
- (4) The Ombudsman may disclose to the person who made the disclosure any additional information that the Ombudsman thinks appropriate.
- (5) This section does not apply in respect of a person who made an anonymous disclosure.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

**PART 7 – INVESTIGATION OF PUBLIC INTEREST
DISCLOSURES BY PUBLIC BODIES**

Division 1 – Establishment of procedures

**60. Public body to establish procedures that comply
with guidelines and standards**

- (1) A public body is to establish procedures that comply with any guidelines and standards referred to in section 38(1)(c).
- (2) The procedures established by a public body under subsection (1) are to include procedures for the protection of the welfare of a person making a disclosure.
- (3) A large public body is to submit its procedures to the Ombudsman for approval, and is to submit its procedures to the Ombudsman at least once in each 3-year period following the initial approval.
- (4) In this section –

GBE means a Government Business Enterprise within the meaning of the *Government Business Enterprises Act 1995*;

large public body includes –

- (a) a State Service Agency; and
- (b) a council within the meaning of the *Local Government Act 1993*; and

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 61

Part 7 – Investigation of public interest disclosures by public bodies

(c) a GBE; and

(d) a State-owned company;

State-owned company means a company that is incorporated under the Corporations Act and is controlled by –

(a) the Crown; or

(b) a GBE; or

(c) a statutory authority; or

(d) another company which is itself controlled by an entity referred to in paragraph (a), (b) or (c).

(5) For the purposes of the definition of *State-owned company* in subsection (4), the provisions of the Corporations Act relating to control are taken to apply as if the Crown, GBE or statutory authority, as the case may be, were a corporation under that Act.

61. Availability of procedures

(1) A public body is to make a copy of the procedures established by it available to each member, officer and employee of the public body.

(2) A public body is to make the procedures available to the public in such manner as it thinks fit.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

62. Review of procedures

- (1) The Ombudsman may review the procedures of a public body at any time to ensure that the procedures comply with this Act and the Ombudsman’s guidelines and standards, but must review the procedures at least once in each 3-year period following approval under section 60(3).
- (2) The Ombudsman may review the implementation of the procedures of a public body to ensure that their implementation complies with this Act and the Ombudsman’s guidelines and standards.
- (3) The Ombudsman may make any recommendation to a public body that the Ombudsman thinks fit arising from a review under this section.
- (4) If it appears to the Ombudsman that insufficient steps have been taken within a reasonable time after making a recommendation under subsection (3), the Ombudsman may, after considering any comments of the public body, send a copy of the recommendation to the relevant Minister.

62A. Role of principal officer

- (1) The principal officer is responsible for –
 - (a) preparing procedures for approval by the Ombudsman; and

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 62A

Part 7 – Investigation of public interest disclosures by public bodies

- (b) receiving public interest disclosures and ensuring they are dealt with in accordance with this Act; and
 - (c) ensuring the protection of witnesses; and
 - (d) ensuring the application of the principles of natural justice in the public body's procedures; and
 - (e) ensuring the promotion of the importance of public interest disclosures, including general education of all staff about the legislation, and ensuring easy access to information about both the legislation and the public body's procedures; and
 - (f) providing access, for persons making a disclosure and others involved in the process of investigation, to confidential employee assistance programs; and
 - (g) providing access, for persons making a disclosure and others involved in the process of investigation, to appropriately trained internal support staff.
- (2) The principal officer of a public body is to appoint one or more persons as public interest disclosure officers.
- (3) A public interest disclosure officer may be appointed for a period not exceeding 3 years, and may be reappointed for further periods not exceeding 3 years.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

- (4) Prior to the appointment or reappointment of a public interest disclosure officer, the principal officer must ensure that the officer to be appointed or reappointed has the skills and knowledge to fulfil the role of a public interest disclosure officer.

62B. Delegation by principal officer

- (1) The principal officer may by instrument in writing delegate to a public interest disclosure officer specified in the instrument the performance or exercise of such of his or her functions or powers under this Act (other than this power of delegation) as are specified in the instrument, and may, by instrument in writing, revoke wholly or in part any such delegation.
- (2) Notwithstanding any delegation under this section, the principal officer may continue to perform or exercise all or any of the functions or powers delegated.
- (3) Any act or thing done by or to a delegate while acting in the exercise of a delegation under this section has the same force and effect as if the act or thing had been done by or to the principal officer, and is taken to have been done by or to the principal officer.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 63

Part 7 – Investigation of public interest disclosures by public bodies

Division 2 – Requirement to investigate

63. Duty to investigate

Subject to this Division, a public body must investigate –

- (a) every disclosure that it receives and determines is a public interest disclosure under section 33; and
- (b) every disclosed matter that the Ombudsman has referred to the public body to be investigated under this Part.

64. Matters that do not have to be investigated

A public body may decide not to investigate a disclosed matter referred to in section 63(a) –

- (a) if in its opinion the disclosure is trivial, vexatious, misconceived or lacking in substance; or
- (b) if the subject matter of the disclosure has already been adequately dealt with by the Ombudsman or a public body, statutory authority, Commonwealth statutory authority, commission, court or tribunal; or
- (c) if the person making the disclosure has commenced proceedings in a commission, court or tribunal in relation to the same matter, and that commission, court or tribunal has power to order

Public Interest Disclosures Act 2002
Act No. 16 of 2002

remedies similar to those available under this Act; or

- (d) if the person making the disclosure had knowledge for more than 12 months of the disclosed matter before making the disclosure and failed to give a satisfactory explanation for the delay in making the disclosure; or
- (e) if the disclosure relates solely to the personal interests of the person making the disclosure; or
- (f) if the disclosure is based on false or misleading information; or
- (g) if the matter which is the subject of the disclosure has already been determined and the additional disclosure does not provide significant or substantial new information.

65. Decision by public body not to investigate

- (1) If, under section 64, a public body decides not to investigate a disclosed matter, the public body must, within 14 days –
 - (a) notify the person who made the disclosure of its decision and the reasons for its decision; and
 - (b) notify the Ombudsman that the public body has determined that the disclosure will not be investigated.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 66

Part 7 – Investigation of public interest disclosures by public bodies

- (2) On receipt of a notification that a public body has decided not to investigate a disclosure matter, the Ombudsman must review that decision.
- (3) Subsection (1)(a) does not apply in respect of a person who made an anonymous disclosure.

66.

67. Determination by Ombudsman

- (1) Division 2 of Part 6 applies to a disclosed matter referred to the Ombudsman under this Division.
- (2) The Ombudsman must, within a reasonable time, notify the public body that referred the disclosed matter under this Division of the determination as to whether a disclosed matter should be investigated.

68. Referral to Ombudsman by public body

A public body may refer the investigation of a disclosed matter to the Ombudsman if the public body considers that its own investigation is being obstructed or that it is otherwise not within the capacity of the public body to complete the investigation.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

69. Ombudsman may take over investigation

If the Ombudsman is not satisfied with an investigation of a disclosed matter by a public body under this Part, the Ombudsman may take over the investigation.

70. Provision of information to Ombudsman

If the Ombudsman commences or takes over an investigation of a disclosed matter that a public body was to investigate or has commenced investigating, the public body must give to the Ombudsman in writing any information that it has, and any findings, preliminary or otherwise, that it has made, in respect of the matter.

71. Ombudsman's powers in relation to certain investigations

- (1) If an investigation by a public body is referred to the Ombudsman under section 68 or taken over by the Ombudsman under section 69 or 77A, the Ombudsman may –
 - (a) commence a new investigation; or
 - (b) complete the investigation; or
 - (c) refer the investigation back to the public body to investigate with recommendations about the future conduct of the investigation; or
 - (d) refer the matter to another public body to investigate.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 72

Part 7 – Investigation of public interest disclosures by public bodies

- (2) If an investigation is taken over by the Ombudsman under section 69, the Ombudsman may also inquire into the conduct of the investigation by the public body.
- (3) Divisions 3 and 4 of Part 6 apply to an investigation commenced, referred to or taken over by the Ombudsman under this Division.

72. Notice of referral

- (1) If a public body refers an investigation to the Ombudsman under this Part, the public body must give notice of that referral to the person who made the disclosure unless it was an anonymous disclosure.
- (2) If the Ombudsman takes over an investigation of a disclosed matter under this Part, the Ombudsman must give notice of that fact to the person who made the disclosure unless it was an anonymous disclosure.

Division 3 – Investigation by public body

73. Investigation to be in accordance with procedures

An investigation under this Part by a public body of a disclosed matter must be in accordance with the procedures established by the public body.

74. Information about progress of investigation

- (1) A public body conducting an investigation of a disclosed matter must, at the request of the

Public Interest Disclosures Act 2002
Act No. 16 of 2002

Ombudsman or person who made the disclosure, give the Ombudsman or the person (as the case requires) reasonable information about the investigation.

- (2) A public body must give the information within 28 days of receiving the request.
- (3) A public body is not required to give the information to the person who made the disclosure if –
 - (a) the information requested has already been given to that person; or
 - (b) the giving of the information requested would endanger the safety of any person or prejudice the conduct of the investigation.

Division 4 – Action on investigation

75. Action to be taken by public body

- (1) If, on completing an investigation of a disclosed matter, the public body finds that the conduct that was the subject of the investigation has occurred, the public body –
 - (a) must take all reasonable steps to prevent the conduct from continuing or occurring in the future; and
 - (b) may take action to remedy any harm or loss arising from the conduct.
- (2) The steps to be taken may include –

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 76

Part 7 – Investigation of public interest disclosures by public bodies

- (a) the bringing of disciplinary proceedings against the person responsible for the conduct that was the subject of the investigation; and
- (b) the referral of the matter to an appropriate authority for further consideration.

76. Report on investigation

- (1) On completing an investigation of a disclosed matter, a public body must notify in writing –
 - (a) the Ombudsman of the findings of the investigation and the steps (if any) taken under section 75; and
 - (b) the relevant person or body of the steps (if any) taken under section 75.
- (2) For the purposes of subsection (1), a relevant person or body is –
 - (a) in the case of an investigation of a disclosed matter relating to an employee of a council, the council; and
 - (b) in any other case, the relevant Minister.

77. Report to person making disclosure

- (1) Within a reasonable time after completing an investigation of a disclosed matter, the public body must inform the person who made the

Public Interest Disclosures Act 2002
Act No. 16 of 2002

Part 7 – Investigation of public interest disclosures by public bodies

s. 77A

disclosure of the findings of the investigation and the steps (if any) taken under section 75.

- (2) This section does not apply in respect of a person who made an anonymous disclosure.

77A. Investigations to be completed within 6 months

- (1) A public body must complete an investigation of a public interest disclosure as soon as practicable, but, in any event, not more than 6 months from the date of the determination that the disclosure is a public interest disclosure, unless it makes a decision not to investigate in accordance with section 64.
- (2) A public body may apply to the Ombudsman for an extension of up to 6 months in which to complete the investigation.
- (3) The Ombudsman may grant an extension if he or she considers, having regard to all the matters involved, that reasonable progress has been achieved by the public body.
- (4) If the investigation is not completed within the period referred to in subsection (1) or within any period of extension granted by the Ombudsman, the public body must refer the public interest disclosure to the Ombudsman together with all relevant information within 14 days of the end of that period.
- (5) The Ombudsman must complete the investigation referred to him or her under

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 77A

Part 7 – Investigation of public interest disclosures by public bodies

subsection (4) as soon as practicable after receiving the referral.

- (6) If the Ombudsman is unable to complete any investigation referred to him or her under subsection (4) within 6 months after receiving the referral, the Ombudsman must provide the Joint Committee with a report.
- (7) The report referred to in subsection (6) is to include details of the type of improper conduct that is the subject of the public interest disclosure, details of the progress up to the date of the report and the reasons why the investigation has not been completed, but must not identify the parties to the investigation.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

**PART 8 – INVESTIGATION OF DISCLOSURES
ABOUT MEMBERS OF PARLIAMENT**

78. Referral of disclosure to Ombudsman

If a person makes a disclosure to the President of the Legislative Council or the Speaker of the House of Assembly in accordance with Part 2, the President or the Speaker may refer the disclosure to the Ombudsman for investigation.

79. Determination of disclosure as public interest disclosure

- (1) If the President of the Legislative Council or the Speaker of the House of Assembly refers a disclosure to the Ombudsman under this Part, the Ombudsman must, within a reasonable time after receiving the disclosure, determine whether or not the disclosure is a public interest disclosure.
- (2) In making a determination under subsection (1), the Ombudsman must be satisfied that the disclosure shows or tends to show that the member of Parliament to whom the disclosure relates –
 - (a) has engaged, is engaging or proposes to engage in improper conduct in his or her capacity as a member of Parliament; or
 - (b) has taken, is taking or proposes to take detrimental action in contravention of section 19.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 80

Part 8 – Investigation of disclosures about members of Parliament

80. Notice of determination

The Ombudsman must, within a reasonable time, notify the President of the Legislative Council or the Speaker of the House of Assembly, as the case requires, of the determination under section 79 in respect of the disclosure.

81. Investigation by Ombudsman

The Ombudsman must investigate every disclosure referred to the Ombudsman by the President of the Legislative Council or the Speaker of the House of Assembly that the Ombudsman has determined is a public interest disclosure.

82. Investigations to be conducted in accordance with Division 3 of Part 6

Division 3 of Part 6, except sections 46 and 53, applies to an investigation commenced by the Ombudsman under this Part.

83. Report on investigation

On completion of an investigation of a disclosed matter under this Part, the Ombudsman must report the findings of the investigation to the President of the Legislative Council or the Speaker of the House of Assembly (as the case requires).

PART 9 – ANNUAL REPORTS AND OTHER REPORTS

84. Annual report by Ombudsman

The Ombudsman must include in the Ombudsman's annual report under section 30 of the *Ombudsman Act 1978* –

- (a) information as to how persons may obtain or access copies of the current guidelines and standards published by the Ombudsman under Part 6; and
- (b) the number and types of disclosures made to the Ombudsman during the year; and
- (c) the number and types of determinations made by the Ombudsman during the year as to whether disclosures are public interest disclosures; and
- (d) the number and types of disclosed matters that during the year the Ombudsman has investigated; and
- (e) the number and types of disclosed matters that during the year the Ombudsman has referred –
 - (i) under section 41, to the Commissioner of Police, the Auditor-General, a prescribed public body or the holder of a prescribed office to investigate; or

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 84

Part 9 – Annual reports and other reports

- (ii) to a public body to investigate under Part 7; and
- (f) the number and types of disclosed matters –
 - (i) that the Ombudsman has declined to investigate during the year; or
 - (ii) that were referred by a public body during the year to the Ombudsman to investigate; and
- (g) the number and types of disclosures referred to the Ombudsman under this Act by the President of the Legislative Council or the Speaker of the House of Assembly during the year; and
- (h) the number and types of investigations of disclosed matters taken over by the Ombudsman during the year; and
- (i) the number and types of investigations of disclosed matters for which the Ombudsman has made a recommendation during the year; and
- (j) the recommendations made by the Ombudsman during the year in relation to each type of disclosed matter; and
- (k) the recommendations made by the Ombudsman during the year in relation to the procedures established by a public body under Part 7; and

Public Interest Disclosures Act 2002
Act No. 16 of 2002

Part 9 – Annual reports and other reports

s. 85

- (l) the action taken during the year on each recommendation of the Ombudsman under this Act.

85. Other reports by Ombudsman

The Ombudsman may at any time cause a report on any matter arising in relation to a disclosed matter to be laid before each House of Parliament.

86. Annual reports by public body

If a public body is required by an Act to prepare a report of operations or an annual report on its activities during a year, the report must include –

- (a) information as to how persons may obtain or access copies of the current procedures established by the public body under Part 7; and
- (b) the number and types of disclosures made to the public body during the year and the number of those disclosures that the public body determines to be public interest disclosures; and
- (c) the number of disclosures determined by the public body to be public interest disclosures that it investigated during the year; and
- (d) the number and types of disclosed matters referred to the public body during the year by the Ombudsman; and

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 86

Part 9 – Annual reports and other reports

- (e) the number and types of disclosed matters referred during the year by the public body to the Ombudsman to investigate; and
- (f) the number and types of investigations of disclosed matters taken over by the Ombudsman from the public body during the year; and
- (g) the number and types of disclosed matters that the public body has decided not to investigate during the year; and
- (h) the number and types of disclosed matters that were substantiated on investigation and the action taken on completion of the investigation; and
- (i) any recommendations of the Ombudsman under this Act that relate to the public body.

PART 10 – GENERAL

87. Offence to make false disclosure

- (1) A person must not knowingly provide false information under this Act, intending that it be acted on as a disclosed matter, to –
- (a) the President of the Legislative Council;
or
 - (b) the Speaker of the House of Assembly;
or
 - (c) the Ombudsman; or
 - (d) the Integrity Commission; or
 - (e) the Commissioner of Police; or
 - (f) a public body; or
 - (g) the chairman of the Public Accounts Committee; or
 - (h) the Joint Committee.

Penalty: Fine not exceeding 240 penalty units
or imprisonment for a term of 2 years,
or both.

- (2) A person must not knowingly provide false information to a person conducting an investigation under this Act.

Penalty: Fine not exceeding 240 penalty units
or imprisonment for a term of 2 years,
or both.

88. Protection of Ombudsman and officers

- (1) The Ombudsman, an officer of the Ombudsman, the President of the Legislative Council, the Speaker of the House of Assembly, the Commissioner of Police, a public body or an officer of a public body is not liable, whether on the ground of lack of jurisdiction or on any other ground, to any civil or criminal proceedings to which he or she would have been liable apart from this section in respect of any act purporting to be done or omitted in the performance of functions or exercise of powers under this Act unless the act was done or omitted in bad faith.
- (2) No civil or criminal proceedings may be brought against a person or body referred to in subsection (1) in respect of an act or omission to act referred to in subsection (1) without the leave of the Supreme Court.
- (3) The Supreme Court is not to give leave under subsection (2) unless it is satisfied that there is substantial ground for the contention that the person or body to be proceeded against has acted or omitted to act in bad faith.
- (4) An injunction is not to be issued, and an order of review is not to be made under the *Judicial Review Act 2000*, restraining the Ombudsman or a public body from carrying out, or compelling the Ombudsman or a public body to carry out, any investigation under this or any other Act.

89. Evidence not admissible

- (1) Information is not admissible as evidence (if given by a party) in legal proceedings if it was obtained or received by the party –
 - (a) from the Ombudsman or a public body in the course of or as a result of –
 - (i) a disclosure under Part 2; or
 - (ii) the investigation of a disclosed matter under this Act; or
 - (b) from any person who obtained it in that way.
- (2) Subsection (1) does not apply to –
 - (a) proceedings in relation to an offence against section 19, 54 or 87 of this Act or in relation to section 27 of the *Commissions of Inquiry Act 1995*; or
 - (b) proceedings under section 20 or 21 of this Act.

90. Exemption from *Right to Information Act 2009*

- (1) The *Right to Information Act 2009* does not apply to information contained in records in the possession of a public body that is a public authority under that Act to the extent to which the information discloses information –
 - (a) in relation to a disclosure made under Part 2; or

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 91

Part 10 – General

- (b) likely to lead to the identification of a person who made a disclosure under Part 2; or
- (c) likely to lead to the identification of a person against whom a disclosure under Part 2 is made.

(2) In this section –

public authority has the same meaning as in the *Right to Information Act 2009*.

91. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Ombudsman.

92. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and

Public Interest Disclosures Act 2002
Act No. 16 of 2002

Part 10 – General

s. 92

- (b) the department responsible to the Minister for Justice and Industrial Relations in relation to the administration of this Act is the Department of Justice and Industrial Relations.

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 92

Part 10 – General

NOTES

The foregoing text of the *Public Interest Disclosures Act 2002* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 March 2021 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Public Interest Disclosures Act 2002</i>	No. 16 of 2002	1.1.2004
<i>Police Service (Consequential Amendments) Act 2003</i>	No. 76 of 2003	1.1.2004
<i>Public Interest Disclosures Amendment Act 2004</i>	No. 21 of 2004	29.6.2004
<i>Supreme Court Amendment Act 2007</i>	No. 55 of 2007	1.3.2008
<i>Right to Information (Consequential and Transitional) Act 2009</i>	No. 54 of 2009	1.7.2010
<i>Public Interest Disclosures Amendment Act 2009</i>	No. 68 of 2009	1.10.2010
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2012</i>	No. 13 of 2012	30.5.2012
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2015</i>	No. 38 of 2015	13.10.2015
<i>State Service Legislation (Miscellaneous Amendments) Act 2016</i>	No. 1 of 2016	8.4.2016
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2017</i>	No. 29 of 2017	5.9.2017
<i>Justice Miscellaneous (Commissions of Inquiry) Act 2021</i>	No. 4 of 2021	1.3.2021

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 76 of 2003, Sched. 1 and No. 68 of 2009, s. 5

Public Interest Disclosures Act 2002
Act No. 16 of 2002

Part 10 – General

s. 92

Provision affected	How affected
Section 4	Amended by No. 55 of 2007, Sched. 1 Substituted by No. 68 of 2009, s. 6 Amended by No. 13 of 2012, s. 54
Section 6	Amended by No. 68 of 2009, s. 7
Section 7	Amended by No. 68 of 2009, s. 8 and No. 1 of 2016, Sched. 1
Section 7A	Inserted by No. 68 of 2009, s. 9
Section 8	Amended by No. 68 of 2009, s. 10
Section 13	Substituted by No. 68 of 2009, s. 11
Section 15	Amended by No. 68 of 2009, s. 12 and No. 1 of 2016, Sched. 1
Section 17	Amended by No. 68 of 2009, s. 13
Section 23	Amended by No. 68 of 2009, s. 14, No. 1 of 2016, Sched. 1 and No. 4 of 2021, s. 26
Section 24	Repealed by No. 68 of 2009, s. 15
Part 4	Repealed by No. 1 of 2016, Sched. 1
Section 26	Repealed by No. 1 of 2016, Sched. 1
Section 27	Amended by No. 68 of 2009, s. 16 Repealed by No. 1 of 2016, Sched. 1
Section 28	Repealed by No. 1 of 2016, Sched. 1
Section 29	Repealed by No. 1 of 2016, Sched. 1
Section 29A	Inserted by No. 68 of 2009, s. 17
Section 29B	Inserted by No. 68 of 2009, s. 17
Section 29C	Inserted by No. 68 of 2009, s. 17
Section 29D	Inserted by No. 68 of 2009, s. 17
Section 30	Amended by No. 1 of 2016, Sched. 1
Section 33	Amended by No. 68 of 2009, s. 18 and No. 1 of 2016, Sched. 1
Section 35	Amended by No. 68 of 2009, s. 19
Section 36	Repealed by No. 68 of 2009, s. 20
Section 38	Amended by No. 68 of 2009, s. 21
Section 39A	Inserted by No. 68 of 2009, s. 22
Section 40	Amended by No. 68 of 2009, s. 23
Section 41	Amended by No. 4 of 2021, s. 27
Section 46	Amended by No. 68 of 2009, s. 24
Section 51	Amended by No. 54 of 2009, Sched. 1
Section 56	Amended by No. 68 of 2009, s. 25
Section 60	Substituted by No. 68 of 2009, s. 26 Amended by No. 38 of 2015, s. 45
Section 62	Amended by No. 68 of 2009, s. 27
Section 62A	Inserted by No. 68 of 2009, s. 28
Section 62B	Inserted by No. 68 of 2009, s. 28
Section 64	Amended by No. 68 of 2009, s. 29
Section 65	Amended by No. 68 of 2009, s. 30
Section 66	Repealed by No. 68 of 2009, s. 31
Section 68	Amended by No. 68 of 2009, s. 32
Section 71	Amended by No. 68 of 2009, s. 33
Section 77A	Inserted by No. 68 of 2009, s. 34

Public Interest Disclosures Act 2002
Act No. 16 of 2002

s. 92

Part 10 – General

Provision affected	How affected
Section 84	Amended by No. 21 of 2004, s. 4 and No. 68 of 2009, s. 35
Section 86	Amended by No. 21 of 2004, s. 5
Section 87	Amended by No. 68 of 2009, s. 36, No. 1 of 2016, Sched. 1 and No. 29 of 2017, Sched. 1
Section 88	Amended by No. 1 of 2016, Sched. 1
Section 90	Substituted by No. 54 of 2009, Sched. 1
