

2020

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

Public Interest Disclosure Amendment Bill 2020

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2020

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

Public Interest Disclosure Amendment Bill 2020

A Bill for

An Act to amend the *Public Interest Disclosure Act 2012*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Public Interest Disclosure Amendment Act 2020*.

3 **2 Commencement**

4 This Act commences on a day fixed by the Minister by written notice.

5 *Note 1* The naming and commencement provisions automatically commence on
6 the notification day (see [Legislation Act](#), s 75 (1)).

7 *Note 2* A single day or time may be fixed, or different days or times may be
8 fixed, for the commencement of different provisions (see [Legislation Act](#),
9 s 77 (1)).

10 *Note 3* If a provision has not commenced within 6 months beginning on the
11 notification day, it automatically commences on the first day after that
12 period (see [Legislation Act](#), s 79).

13 **3 Legislation amended**

14 This Act amends the *Public Interest Disclosure Act 2012*.

15 *Note* This Act also amends other legislation (see sch 1).

16 **4 Object of Act**
17 **Section 6 (a)**

18 *omit*

19 make public interest disclosures

20 *substitute*

21 disclose disclosable conduct

1 **5 Sections 7 and 8**

2 *substitute*

3 **7 Meaning of *public interest disclosure***

4 In this Act:

5 ***public interest disclosure*** means a disclosure of disclosable conduct
6 that is taken to be a public interest disclosure under section 17A (3)
7 or section 27 (4).

8 *Note 1* Disclosers and witnesses in relation to public interest disclosures are
9 protected from liability (see pt 7).

10 *Note 2* A discloser for a public interest disclosure may forfeit protections
11 (see s 37).

12 **8 Meaning of *disclosable conduct***

13 (1) For this Act, ***disclosable conduct*** means an action or a policy, practice
14 or procedure of a public sector entity, or public official for a public
15 sector entity, that—

16 (a) is maladministration; or

17 (b) results in a substantial and specific danger to public health or
18 safety, or the environment.

19 (2) However, ***disclosable conduct*** does not include an action or a policy
20 practice or procedure of a public sector entity, or a public official for
21 a public sector entity, that—

22 (a) relates to a personal work-related grievance of the person
23 disclosing the conduct; or

1 (b) is to give effect to a policy of the Territory about amounts,
2 purposes or priorities of public expenditure.

3 **Examples—par (a)**

- 4 1 an interpersonal conflict between the person and another employee
5 2 a decision not to approve the person’s leave application
6 3 a decision relating to the employment, transfer or promotion of the person
7 4 a decision relating to the terms and conditions of employment of the person
8 5 a decision to suspend or terminate the employment of the person, or to
9 discipline the person

10 (3) In this section:

11 *environment*—see the [Environment Protection Act 1997](#), dictionary.

12 *maladministration* means conduct or a policy, practice or procedure
13 that—

14 (a) results in a substantial mismanagement of public resources or
15 public funds; or

16 (b) involves substantial mismanagement in the performance of
17 official functions.

18 *public funds* means funds available to, or under the control of, a
19 public sector entity including public and trust money within the
20 meaning of the [Financial Management Act 1996](#).

21 *public health or safety* includes the health or safety of people—

22 (a) under lawful care or control; or

23 (b) using community facilities or services provided by the private
24 sector or public sector; or

25 (c) in workplaces.

26 **Examples—par (a)**

- 27 1 students under the care or control of a teacher
28 2 patients in a health facility
29 3 detainees in a correctional facility

1 **6** **Meaning of *disclosure officer***
2 **Section 11 (1)**

3 *omit*

4 public interest disclosure

5 *substitute*

6 disclosure of disclosable conduct

7 **7** **Section 11 (1) (a) (i)**

8 *substitute*

9 (i) the public sector standards commissioner; or

10 **8** **Section 11 (1) (a) (vii) and (b) (v)**

11 *omit*

12 declared

13 *substitute*

14 nominated

15 **9** **Section 11 (2) and (3) and note**

16 *substitute*

17 (2) The head of a public sector entity must—

18 (a) nominate at least 1 person to be a disclosure officer for
19 disclosures of disclosable conduct for the entity; and

20 (b) publish the disclosure officer’s contact details on the entity’s
21 website; and

22 (c) if the entity is not the integrity commissioner—give the
23 disclosure officer’s contact details to the integrity
24 commissioner.

- 1 (3) The integrity commissioner must publish, on the integrity
2 commissioner's website, the contact details given under
3 subsection (2) (c).

4 **10 Meaning of *relates to an entity***
5 **Section 12**

- 6 *before*
7 public interest disclosure
8 *insert*
9 disclosure of disclosable conduct or a

10 **11 Part 3**

- 11 *substitute*

12 **Part 3 Disclosing disclosable conduct**

13 **14 Anyone may disclose disclosable conduct**

- 14 Any person may disclose disclosable conduct.

15 **15 Who disclosure of disclosable conduct may be made to**

- 16 (1) A person may disclose disclosable conduct to—
17 (a) a disclosure officer; or
18 (b) a Minister; or
19 (c) if the person is a public official for a public sector entity—
20 (i) a person who, directly or indirectly, supervises or manages
21 the person; or
22 (ii) for a public sector entity that has a governing board—a
23 member of the board; or

- 1 (iii) a public official of the entity who has the function of
2 receiving information of the kind being disclosed or taking
3 action in relation to that kind of information.

4 **Examples**

- 5 1 the chief financial officer of a public sector entity in relation to a
6 disclosure about a substantial mismanagement of public
7 resources by an employee of the entity
8 2 a public official on a clinical standards committee for a public
9 hospital in relation to a disclosure about medical malpractice at
10 the hospital that was resulting in a substantial danger to public
11 health

- 12 (2) If disclosable conduct is disclosed to a person mentioned in
13 subsection (1) (b) or (c), the person must give a copy of the disclosure
14 to a disclosure officer.

15 *Note 1* A person must comply with s (2) as soon as possible after receiving the
16 disclosure of disclosable conduct (see [Legislation Act](#), s 151B).

17 *Note 2* A person who discloses disclosable conduct may disclose the conduct to
18 the Legislative Assembly or a journalist in certain circumstances (see
19 s 27).

20 **16 How to disclose disclosable conduct**

- 21 (1) A disclosure of disclosable conduct may be made—
22 (a) orally or in writing; and
23 (b) using any form of electronic communication; and
24 (c) anonymously; and
25 (d) without the person disclosing the disclosable conduct asserting
26 that the disclosure is made under this Act.

27 **Example**

28 Tranh comments to her supervisor during a coffee break that she believes there are
29 a number of significant irregularities in the ordering of office supplies for her
30 business unit. Tranh does not ask or infer that the irregularities should be
31 investigated.

- 1 (2) If the disclosure is made orally to a person mentioned in
2 section 15 (1)—
- 3 (a) the person must make a written record of the disclosure; and
4 (b) the written record is taken to be a disclosure of disclosable
5 conduct.
- 6 (3) In this section:
- 7 *electronic communication* means communication by telephone,
8 email, fax or any other electronic means.

9 **17 Giving disclosure of disclosable conduct to integrity**
10 **commissioner**

- 11 (1) This section applies to a disclosure officer (other than the integrity
12 commissioner), if—
- 13 (a) a person discloses disclosable conduct to the disclosure officer;
14 and
- 15 (b) the disclosure officer is satisfied on reasonable grounds that the
16 disclosure is—
- 17 (i) about disclosable conduct; and
18 (ii) disclosed in good faith; and
- 19 (c) the disclosure is not about the integrity commissioner.
- 20 *Note* For disclosures about disclosable conduct of the integrity commissioner,
21 see s 26A.
- 22 (2) The disclosure officer must—
- 23 (a) give a copy of the disclosure to the integrity commissioner; and
24 (b) if the person who disclosed the conduct did not disclose the
25 conduct anonymously—
- 26 (i) give the integrity commissioner the person's name and
27 contact details; and

1 (ii) tell the person, in writing, when the disclosure was given
2 to the integrity commissioner.

3 *Note 1* The disclosure officer must comply with s (2) as soon as possible after
4 receiving the disclosure of disclosable conduct (see [Legislation Act](#),
5 s 151B).

6 *Note 2* A person who discloses disclosable conduct may disclose the conduct to
7 the Legislative Assembly or a journalist in certain circumstances (see
8 s 27).

9 **17A When disclosure of disclosable conduct given to integrity
10 commissioner is a public interest disclosure**

11 (1) This section applies if—

12 (a) a person discloses disclosable conduct to the integrity
13 commissioner; or

14 (b) another disclosure officer gives the integrity commissioner a
15 disclosure of disclosable conduct under section 17.

16 *Note* The integrity commissioner is a disclosure officer (see s 11).

17 (2) The integrity commissioner must assess the disclosure and decide if
18 the commissioner is satisfied on reasonable grounds that the
19 disclosure is—

20 (a) about disclosable conduct; and

21 (b) disclosed in the public interest; and

22 (c) not frivolous or vexatious.

23 (3) If the integrity commissioner is satisfied under subsection (2), the
24 disclosure of disclosable conduct—

25 (a) is taken to be a public interest disclosure; and

26 (b) the person who disclosed the disclosable conduct is taken to be
27 the discloser for the public interest disclosure; and

1 (c) the protections in part 7 are taken to apply to the discloser for
2 the public interest disclosure from the day the conduct was
3 disclosed.

4 *Note* A discloser for a public interest disclosure may forfeit protections
5 (see s 37).

6 **17B Notice about disclosure of disclosable conduct that is not**
7 **public interest disclosure**

8 (1) If a disclosure of disclosable conduct is not taken to be a public
9 interest disclosure under section 17A (3) (a), the integrity
10 commissioner must tell the relevant people, in writing, that—

11 (a) the disclosure is not taken to be a public interest disclosure; and

12 (b) the protections in part 7 do not apply to the person who disclosed
13 the conduct in relation to the disclosure.

14 (2) In this section:

15 *relevant people* means—

16 (a) if the disclosure was given to the integrity commissioner by
17 another disclosure officer under section 17—the disclosure
18 officer; and

19 (b) if the person who disclosed the disclosable conduct did not
20 disclose the conduct anonymously—the person.

21 *Note* A person who discloses disclosable conduct may disclose the conduct to
22 the Legislative Assembly or a journalist in certain circumstances
23 (see s 27).

24 **12 Part 4 heading**

25 *substitute*

26 **Part 4 Dealing with a public interest**
27 **disclosure**

13 Sections 18 to 20

substitute

18 Meaning of *investigating entity*

In this part:

investigating entity, for an investigation of a public interest disclosure, means—

- (a) if the integrity commissioner does not refer the disclosure to an entity for investigation under section 19 (2) (b)—the integrity commissioner; or
- (b) if the integrity commissioner refers the disclosure to an entity for investigation under section 19 (2) (b)—the entity.

19 Integrity commissioner—investigate or refer public interest disclosure

- (1) This section applies to the integrity commissioner if—
 - (a) a disclosure of disclosable conduct is taken to be a public interest disclosure under section 17A (3); or
 - (b) the integrity commissioner becomes aware of a disclosure of disclosable conduct that is taken to be a public interest disclosure under section 27 (4).
- (2) The integrity commissioner must—
 - (a) investigate the public interest disclosure; or
 - (b) refer the public interest disclosure to 1 of the following entities for investigation:
 - (i) the head of a public sector entity;
 - (ii) the head of service;
 - (iii) the ombudsman;

- 1 (iv) the parliamentary standards commissioner;
- 2 (v) the public sector standards commissioner.
- 3 (3) In deciding whether to refer the public interest disclosure to an entity
4 under subsection (2) (b), the integrity commissioner must consult the
5 entity.
- 6 (4) If the integrity commissioner refers the public interest disclosure to
7 an entity under subsection (2) (b), the integrity commissioner must
8 give the entity—
- 9 (a) a copy of the disclosure; and
- 10 (b) if the discloser for the public interest disclosure did not disclose
11 the conduct anonymously—the name and contact details of the
12 discloser.
- 13 *Note* For par (b), a discloser for a public interest disclosure may disclose the
14 conduct to the Legislative Assembly or a journalist in certain
15 circumstances (see s 27A).

16 **19A Notice about investigation**

- 17 (1) This section applies if the discloser for a public interest disclosure did
18 not disclose the conduct anonymously.
- 19 (2) The integrity commissioner must tell the discloser for the public
20 interest disclosure, in writing—
- 21 (a) that the disclosure will be investigated under section 20; and
- 22 (b) the name and contact details of the investigating entity for the
23 public interest disclosure; and
- 24 (c) if the integrity commissioner refers the disclosure to an entity
25 under section 19 (2) (b)—the date of the referral.

-
- 1 (2) The integrity commissioner must give the discloser for the public
2 interest disclosure information about the following:
- 3 (a) the obligations under section 23 (Discloser must be kept
4 informed about investigation);
- 5 (b) the circumstances mentioned in section 27A (Giving public
6 interest disclosure to Legislative Assembly or journalist);
- 7 (c) the protections under part 7 (Protections for disclosers and
8 witnesses).

9 **20 Investigating public interest disclosure**

- 10 (1) The investigating entity for a public interest disclosure must—
- 11 (a) investigate the disclosure; and
- 12 (b) comply with the rules of natural justice and procedural fairness
13 in relation to investigating the disclosure.
- 14 (2) The investigating entity may end the investigation if—
- 15 (a) the discloser for the public interest disclosure has withdrawn the
16 disclosure and the investigating entity is reasonably satisfied
17 that there are no further matters in relation to the disclosure that
18 warrant investigation; or
- 19 (b) if a discloser for the public interest disclosure disclosed the
20 conduct anonymously and the investigating entity is reasonably
21 satisfied that this makes it impracticable for the disclosure to be
22 investigated; or
- 23 (c) if the discloser for the public interest disclosure did not disclose
24 the conduct anonymously—
- 25 (i) the investigating entity asks the discloser for assistance to
26 investigate the disclosure; and
- 27 (ii) the discloser fails, without reasonable excuse, to give the
28 assistance; and

- 1 (iii) the investigating entity is reasonably satisfied that this
2 makes it impracticable for the disclosure to be
3 investigated; or
- 4 (d) the investigating entity is reasonably satisfied that—
- 5 (i) the disclosed information is wrong in a material way and
6 investigation is not warranted; or
- 7 (ii) the age of the disclosed information makes it impracticable
8 for the disclosure to be investigated; or
- 9 (iii) there is a more appropriate way reasonably available to
10 deal with the disclosable conduct that is the subject of the
11 public interest disclosure.

12 *Note* A discloser for a public interest disclosure may disclose the conduct to
13 the Legislative Assembly or a journalist in certain circumstances (see
14 s 27A).

15 **14 Sections 22 and 23**

16 *substitute*

17 **23 Discloser must be kept informed about investigation**

- 18 (1) The investigating entity for a public interest disclosure must tell the
19 discloser for the public interest disclosure, in writing—
- 20 (a) the progress of the investigation of the disclosure, at least once
21 every 3 months; and
- 22 (b) the outcome of the investigation of the disclosure, including any
23 action by the head of a public sector entity in relation to the
24 disclosure under section 24; and
- 25 (c) about any referral of the disclosure to the chief police officer
26 under section 21; and

- 1 (d) if the investigating entity for the disclosure ends the
2 investigation under section 20—
- 3 (i) the ground mentioned in section 20 (2) for ending the
4 investigation; and
- 5 (ii) the reasons for ending the investigation on that ground.
- 6 (2) This section does not apply if the discloser for the public interest
7 disclosure—
- 8 (a) disclosed the conduct anonymously; or
- 9 (b) has asked, in writing, not to be kept informed about the
10 disclosure.
- 11 (3) If the public interest disclosure has been referred to the chief police
12 officer under section 21, the investigating entity for the public interest
13 disclosure is only required to comply with subsection (1) (a), (b)
14 and (d) to the extent that relevant information has been given to the
15 entity by the chief police officer.
- 16 *Note 1* Certain information need not be given to the discloser for a public interest
17 disclosure (see s 26).
- 18 *Note 2* A discloser for a public interest disclosure may disclose the conduct to
19 the Legislative Assembly or a journalist in certain circumstances
20 (see s 27A).

21 **15 Public sector entity must take action**
22 **Section 24 (1) (b), except note**

23 *substitute*

- 24 (b) if an investigation of a public interest disclosure in relation to
25 the disclosable conduct has been completed—discipline any
26 person responsible for the disclosable conduct.

- 1 **16 Section 24 (2) and (3) and note**
- 2 *substitute*
- 3 (2) The head of the public sector entity must—
- 4 (a) tell the integrity commissioner about any action taken or
- 5 proposed to be taken; and
- 6 (b) tell the discloser for the public interest disclosure about any
- 7 action taken or proposed to be taken unless—
- 8 (i) the discloser disclosed the conduct anonymously; or
- 9 (ii) the discloser has asked, in writing, not to be kept informed
- 10 about the public interest disclosure.
- 11 *Note 1* Certain information need not be given to the discloser for a public interest
- 12 disclosure (see s 26).
- 13 *Note 2* A discloser for a public interest disclosure may disclose the conduct to
- 14 the Legislative Assembly or a journalist in certain circumstances (see
- 15 s 27A).
- 16 **17 Section 25 heading**
- 17 *substitute*
- 18 **25 Integrity commissioner must be kept informed**
- 19 **18 Section 25 (1)**
- 20 *omit*
- 21 An investigating entity for a public interest disclosure
- 22 *substitute*
- 23 If the investigating entity for a public interest disclosure is not the
- 24 integrity commissioner, the entity

1 **19 Section 25 (1) (b)**

2 *substitute*

3 (b) the referral of the disclosure under section 21 (Referral to chief
4 police officer);

5 **20 Section 25 (1) (d)**

6 *omit*

7 not to investigate the disclosure, or

8 **21 Section 25 (1) (d) (iii)**

9 *omit*

10 section 20 (g)

11 *substitute*

12 section 20 (2) (d) (iii)

13 **22 Section 25 (2)**

14 *before*

15 disclosure

16 *insert*

17 public interest

18 **23 Limitations on obligations to keep people informed etc**
19 **Section 26 (1)**

20 *after*

21 discloser

22 *insert*

23 for a public interest disclosure

1 **24 Section 26 (1), examples**

2 *substitute*

3 **Example**

4 The integrity commissioner need not give the head of a public sector entity
5 to which a public interest disclosure relates a copy or record of the disclosure
6 if the integrity commissioner believes it is likely that detrimental action will
7 be taken against the discloser for the public interest disclosure as a result.

8 **25 Section 26 (3) and (4)**

9 *substitute*

10 (3) A discloser for a public interest disclosure need not be told
11 information about the disclosure, if telling the discloser—

12 (a) would, or could reasonably be expected to, identify another
13 person who gives information in relation to the disclosure; or

14 (b) is contrary to a law in force in the Territory.

15 **26 New section 26A**

16 *in part 4, insert*

17 **26A Disclosable conduct of integrity commissioner**

18 (1) This section applies if—

19 (a) a person discloses disclosable conduct about the integrity
20 commissioner to a person mentioned in section 15 (1) (the
21 *receiver*); and

22 (b) the receiver is satisfied on reasonable grounds that the
23 disclosure—

24 (i) is about disclosable conduct; and

25 (ii) is disclosed in good faith.

- 1 (2) The receiver must—
- 2 (a) give a copy of the disclosure of disclosable conduct to the
- 3 inspector; and
- 4 (b) if the person did not disclose the conduct anonymously—
- 5 (i) give the inspector the name and contact details of the
- 6 person; and
- 7 (ii) tell the person, in writing, the date when the disclosure was
- 8 given to the inspector.
- 9 (3) If the receiver gives a disclosure of disclosable conduct to the
- 10 inspector under subsection (2), the disclosure is taken to be a
- 11 complaint to the inspector under the *Integrity Commission Act 2018*,
- 12 section 257 (Inspector—making a complaint to the inspector).
- 13 (4) In this section:
- 14 *inspector*—see the *Integrity Commission Act 2018*, dictionary.

27 Section 27

16 *substitute*

27 Giving disclosure of disclosable conduct to Legislative Assembly or journalist

- 19 (1) This section applies to a person who—
- 20 (a) disclosed disclosable conduct to a person mentioned in
- 21 section 15 (1); and
- 22 (b) did not disclose the conduct anonymously; and
- 23 (c) has not received the notice mentioned in section 17B or 19A
- 24 within 3 months after the day the person disclosed the
- 25 disclosable conduct.
- 26 (2) The person may disclose the disclosable conduct to a member of the
- 27 Legislative Assembly or a journalist.

- 1 (3) The person may only disclose information that is reasonably
2 necessary to show that the conduct is disclosable conduct.
- 3 (4) The disclosure of disclosable conduct by the person under
4 subsection (2) is taken to be a public interest disclosure.
- 5 (5) The person is taken to be the discloser for a public interest disclosure.
- 6 (6) The protections in part 7 are taken to apply to the person from the day
7 the person disclosed the conduct.

8 *Note 1* The integrity commissioner must refer or investigate the disclosure under
9 s 19.

10 *Note 2* A discloser for a public interest disclosure may forfeit protections
11 (see s 37).

12 **27A Giving public interest disclosure to Legislative Assembly**
13 **or journalist**

- 14 (1) A discloser for a public interest disclosure may give the public
15 interest disclosure to a member of the Legislative Assembly or a
16 journalist if—
- 17 (a) the discloser is told under section 19A that the disclosure will be
18 investigated, but is not told about the progress of the
19 investigation under section 23 for more than 3 months; or
- 20 (b) the following applies:
- 21 (i) the public interest disclosure is investigated
22 under section 20;
- 23 (ii) there is clear evidence that 1 or more instances of
24 disclosable conduct mentioned in the disclosure has
25 occurred, or was likely to have occurred;
- 26 (iii) the discloser is told by the investigating entity that no
27 action will be taken in relation to the disclosable conduct
28 under section 24 (Public sector entity must take action).

- 1 (2) The discloser for a public interest disclosure may only give the
2 Legislative Assembly or a journalist information reasonably related
3 to the disclosure.

4 **28 Section 28**

5 *substitute*

6 **28 Integrity commissioner's functions**

- 7 (1) The integrity commissioner has the following functions:
- 8 (a) to give advice about disclosures of disclosable conduct and
9 public interest disclosures;
 - 10 (b) to monitor how public sector entities deal with disclosures of
11 disclosable conduct and public interest disclosures;
 - 12 (c) to review the way in which public sector entities investigate and
13 deal with public interest disclosures generally, or particular
14 public interest disclosures;
 - 15 (d) to ensure just outcomes for people who make public interest
16 disclosures, including by preventing and remedying the effect of
17 detrimental action against people because of public interest
18 disclosures;
 - 19 (e) to undertake, or coordinate the undertaking of, education and
20 training programs about disclosures of disclosable conduct and
21 public interest disclosures.
- 22 (2) The integrity commissioner may tell the ombudsman about a
23 disclosure of disclosable conduct or a public interest disclosure if the
24 commissioner believes it is appropriate for the ombudsman to know
25 about the disclosure.

1 **29 Section 29 heading**

2 *substitute*

3 **29 Integrity commissioner may review decisions**

4 **30 Section 29 (1)**

5 *before*

6 commissioner

7 *insert*

8 integrity

9 **31 Section 29 (1) (a)**

10 *substitute*

11 (a) a decision by another investigating entity to end its investigation
12 of a public interest disclosure under section 20 (2); and

13 **32 Section 29 (2)**

14 *before 1st mention of*

15 commissioner

16 *insert*

17 integrity

18 **33 Section 29 (4) and (5)**

19 *before*

20 commissioner

21 *insert*

22 integrity

1	34	Section 30 heading
2		<i>substitute</i>
3	30	Report by integrity commissioner
4	35	Section 30 (1)
5		<i>before</i>
6		commissioner
7		<i>insert</i>
8		integrity
9	36	Section 30 (1) (b)
10		<i>substitute</i>
11		(b) how a disclosure of disclosable conduct or a public interest
12		disclosure is dealt with by a public sector entity.
13	37	Section 30 (2)
14		<i>before 1st mention of</i>
15		commissioner
16		<i>insert</i>
17		integrity
18	38	Section 31 heading
19		<i>substitute</i>
20	31	Integrity commissioner must tell discloser about decision

1 **39 Section 31 (1)**

2 *omit everything before paragraph (a), substitute*

3 (1) If the integrity commissioner makes a decision under
4 section 29 (4) (a) or (b), the commissioner must tell the discloser for
5 the public interest disclosure that is the subject of the decision—

6 **40 Section 31 (2) (a)**

7 *substitute*

8 (a) the discloser for the public interest disclosure disclosed the
9 conduct anonymously; or

10 **41 Section 31 (2), note**

11 *substitute*

12 *Note* Certain information need not be given to the discloser for a public interest
13 disclosure (see s 26).

14 **42 Section 32 heading**

15 *substitute*

16 **32 Integrity commissioner's guidelines**

17 **43 Section 32 (1)**

18 *substitute*

19 (1) The integrity commissioner must make guidelines about—

20 (a) the way investigating entities investigate public interest
21 disclosures; and

22 (b) the way in which public sector entities deal with disclosures of
23 disclosable conduct and public interest disclosures.

1 **44 Sections 33 and 34**

2 *substitute*

3 **33 Integrity commissioner's procedures**

- 4 (1) The integrity commissioner must make procedures for dealing with
5 disclosures of disclosable conduct and public interest disclosures.
- 6 (2) The procedures must include—
- 7 (a) clear obligations on public sector entities and their public
8 officials to take action to protect disclosers for public interest
9 disclosures; and
- 10 (b) risk management steps for assessing and minimising—
- 11 (i) detrimental action against people because of public
12 interest disclosures; and
- 13 (ii) detriment to people against whom allegations of
14 disclosable conduct are made in a public interest
15 disclosure.

16 **34 Role of ombudsman**

- 17 (1) This section applies if any of the following entities takes an action in
18 relation to the disclosure of disclosable conduct or a public interest
19 disclosure in the exercise of a function under this Act:
- 20 (a) the head of a public sector entity;
- 21 (b) the head of service;
- 22 (c) the parliamentary standards commissioner;
- 23 (d) the public sector standards commissioner.
- 24 (2) A person may complain to the ombudsman about the action.

- 1 (3) Without limiting subsection (2), the person may complain about
2 whether a public sector entity or public official has followed—
- 3 (a) guidelines made by the integrity commissioner under section 32;
4 or
- 5 (b) procedures issued by the integrity commissioner under
6 section 33.
- 7 (4) The ombudsman may exercise the following functions in relation to
8 the complaint:
- 9 (a) giving advice about disclosures of disclosable conduct or public
10 interest disclosures;
- 11 (b) monitoring the management of disclosures of disclosable
12 conduct or public interest disclosures by the entity;
- 13 (c) reviewing the way in which the entity dealt with or investigated
14 the disclosure of disclosable conduct or public interest
15 disclosure that is the subject of the complaint;
- 16 (d) ensuring just outcomes for people who make public interest
17 disclosures, including preventing and remedying the effect of
18 detrimental action taken against disclosers or witnesses because
19 of a public interest disclosure.
- 20 (5) Nothing in this Act is intended to limit the ombudsman’s powers
21 under the *Ombudsman Act 1989*.

22 **45 Part 7 heading**

23 *substitute*

24 **Part 7 Protections for disclosers and**
25 **witnesses**

1 **46 Section 36**

2 *substitute*

3 **36 Protection from defamation action**

4 Without limiting section 35, in a proceeding for defamation brought
5 because of a public interest disclosure, the discloser for the public
6 interest disclosure has a defence of absolute privilege for publishing
7 the information disclosed.

8 **47 Loss of protection**
9 **Section 37**

10 *omit*

11 if a person makes a public interest disclosure and

12 *substitute*

13 to a discloser for a public interest disclosure if

14 **48 Section 37 (1) (a)**

15 *after*

16 information

17 *insert*

18 about the disclosure, or part of the disclosure,

19 **49 Section 37 (1) (b)**

20 *after*

21 disclosure

22 *insert*

23 , or part of the disclosure,

1 **50 Section 37 (2)**

2 *after*
3 disclosure
4 *insert*
5 , or part of the disclosure

6 **51 Damages for detrimental action**
7 **Section 41 (1)**

8 *after*
9 else
10 *insert*
11 because of a public interest disclosure

12 **52 Section 42**

13 *substitute*

14 **42 Injunction to prevent detrimental action etc**

- 15 (1) On application, the Supreme Court may—
- 16 (a) if satisfied that a person has taken detrimental action because of
17 a public interest disclosure—order the person who took the
18 detrimental action to remedy the action; or
- 19 (b) if satisfied that a person is taking, or is likely to take, detrimental
20 action because of a public interest disclosure—grant an
21 injunction to prevent the detrimental action being taken.
- 22 (2) An application may be made by—
- 23 (a) the integrity commissioner; or
24 (b) the discloser for the public interest disclosure; or

1 (c) a person against whom the detrimental action has been or is
2 likely to be taken.

3 (3) The Supreme Court may grant an interim injunction restraining a
4 person from taking detrimental action because of a public interest
5 disclosure before deciding an application for an injunction under this
6 section.

7 **42A Protection of witnesses**

8 (1) A person is not subject to criminal or civil liability because the person
9 (voluntarily or otherwise) gives information, produces a document or
10 answers a question in relation to a public interest disclosure if—

11 (a) the person does so at the request of the investigating entity for
12 the public interest disclosure; and

13 (b) the information, document or answer is relevant to the
14 investigation of the public interest disclosure by the entity.

15 (2) However, if the information, document or answer relates to the
16 person's own conduct, this section does not affect their liability for
17 the conduct.

18 **53 Protection of officials from liability**
19 **Section 43 (3), definition of *official*, paragraph (a)**

20 *before*

21 commissioner

22 *insert*

23 integrity

24 **54 Section 43 (3), definition of *official*, paragraph (d)**

25 *substitute*

26 (d) an investigating entity other than the integrity commissioner; or

1 **55 Offences—use or divulge protected information**
2 **Section 44 (6), definition of *person to whom this section***
3 ***applies*, paragraph (a) (i)**

4 *before*

5 commissioner

6 *insert*

7 integrity

8 **56 Section 44 (6), definition of *person to whom this section***
9 ***applies*, paragraph (a) (iv)**

10 *substitute*

11 (iv) an investigating entity other than the integrity
12 commissioner; or

13 **57 Section 44 (6), definition of *protected information*,**
14 **examples**

15 *after*

16 discloser

17 *insert*

18 for the public interest disclosure

19 **58 New section 45**

20 *insert*

21 **45 Annual reporting by integrity commissioner**

22 (1) The integrity commissioner must include the following information
23 in the commission annual report for each year:

24 (a) the number of disclosures of disclosable conduct given to the
25 integrity commissioner under section 17;

-
- 1 (b) the number of disclosures of disclosable conduct taken to be
2 public interest disclosures under section 17A (3);
- 3 (c) the number of disclosures of disclosable conduct not taken to be
4 public interest disclosures under section 17A (3);
- 5 (d) for a disclosure of disclosable conduct not taken to be a public
6 interest disclosure under section 17A (3)—information about
7 the ground the integrity commissioner was not satisfied of in
8 relation to the disclosure;
- 9 (e) the number of referrals under section 19 (Integrity
10 commissioner—investigate or refer public interest disclosure);
- 11 (f) the number of investigations under section 20, including—
- 12 (i) for each investigating entity for a public interest
13 disclosure—the number of investigations of public interest
14 disclosures by the entity; and
- 15 (ii) whether, on investigation, the public interest disclosure
16 was about disclosable conduct; and
- 17 (iii) the number of investigations brought to an end under
18 section 20; and
- 19 (iv) the ground mentioned in section 20 (2) for ending the
20 investigation;
- 21 (g) the number of referrals under section 21 (Referral to chief police
22 officer);
- 23 (h) information about any action taken in accordance with
24 section 24 (Public sector entity must take action);
- 25 (i) the number of reviews under section 29 (Integrity commissioner
26 may review decisions);
- 27 (j) the number of reports under section 30 (Report by integrity
28 commissioner);

- 1 (k) the number of prosecutions under section 40 (Offence—taking
2 detrimental action);
- 3 (l) information about education and training programs about
4 disclosable conduct and public interest disclosures undertaken
5 or coordinated by the integrity commissioner.
- 6 (2) In this section:
- 7 *commission annual report*—see the *Integrity Commission Act 2018*,
8 section 217.

9 **59 Approved forms**
10 **Section 46**

11 *omit*

12 **60 New section 48**

13 *insert*

14 **48 Review of Act**

- 15 (1) The Minister must, in consultation with the Speaker, review the
16 operation of this Act—
- 17 (a) at the same time as the Minister reviews the *Integrity*
18 *Commission Act 2018* under section 303 of that Act; and
- 19 (b) in conjunction with that Act.
- 20 (2) The Minister must present a report of the review to the Legislative
21 Assembly at the same time the Minister presents a report of the review
22 of the *Integrity Commission Act 2018* under section 303 (2) of that
23 Act.

24 **61 Dictionary, definitions of *commissioner* and *contact***
25 ***details***

26 *omit*

1 **62 Dictionary, definition of *discloser***

2 *substitute*

3 *discloser*, for a public interest disclosure, means the person who
4 discloses disclosable conduct that is taken to be a public interest
5 disclosure under—

6 (a) section 17A (2); or

7 (b) section 27 (4).

8 **63 Dictionary, definition of *disclosure officer***

9 *omit*

10 public interest disclosure

11 *substitute*

12 disclosure of disclosable conduct

13 **64 Dictionary, definition of *investigating entity***

14 *substitute*

15 *investigating entity*, for an investigation of a public interest
16 disclosure—see section 18.

1 **Schedule 1 Consequential and other**
2 **amendments**

3 (see s 3)

4 **Part 1.1 Freedom of Information Act 2016**

5 **[1.1] Schedule 1, new section 1.9 (2)**

6 *insert*

7 (2) Information that would, or could reasonably be expected to, disclose
8 the identity of a person who gives information, produces a document
9 or answers a question in relation to an investigation of a public
10 interest disclosure under the *Public Interest Disclosure Act 2012*.

11 **Part 1.2 Integrity Commission Act 2018**

12 **[1.2] Section 24, new note**

13 *insert*

14 *Note 2* The commissioner has functions under the *Public Interest Disclosure*
15 *Act 2012*.

1 **[1.3] Section 40**

2 *substitute*

3 **40 Commissioner—acting appointment**

4 *Note* The Speaker has power to appoint an acting commissioner if the position
5 is vacant or if the commissioner cannot for any reason exercise a function
6 (see [Legislation Act](#), s 209 (1)).

7 (1) The Speaker must not appoint a person to act as commissioner unless
8 satisfied that the person has extensive knowledge of, and experience
9 in—

10 (a) criminal investigation or criminal adjudication; or

11 (b) law enforcement or the conduct of investigations; or

12 (c) public administration, governance or government.

13 (2) An acting appointment must be made in consultation with the relevant
14 Assembly committee.

15 (3) An acting appointment must not be for a term longer than 6 months.

16 (4) To remove any doubt, concurrent appointments may be made.

17 **Example—concurrent appointment**

18 If the commissioner has a conflict of interest in relation to an investigation, the
19 Speaker may appoint an acting commissioner to perform functions of the
20 commissioner in relation to the investigation while the commissioner continues to
21 perform their other functions.

22 (5) To remove any doubt—

23 (a) subsections (1) and (2) displace the [Legislation Act](#),
24 section 209 (2) and (3); and

25 (b) subsection (3) displaces the [Legislation Act](#), section 221 (1) and
26 (2); and

27 (c) the remaining provisions of the [Legislation Act](#), part 19.3
28 (Appointments) apply in relation to an acting appointment.

1 **[1.4] New section 59A**

2 *insert*

3 **59A Certain disclosures under Public Interest Disclosure**
4 **Act 2012 may be corruption complaints**

- 5 (1) This section applies if—
- 6 (a) a person discloses information about conduct under the *Public*
7 *Interest Disclosure Act 2012*, part 3 (Disclosing disclosable
8 conduct); and
- 9 (b) the disclosure is assessed by the integrity commissioner under
10 that *Act*, section 17A (2) (When disclosure of disclosable
11 conduct given to integrity commissioner is a public interest
12 disclosure); and
- 13 (c) the disclosure is not taken to be a public interest disclosure under
14 that *Act*, s 17A (3), because the commissioner is not satisfied
15 that the disclosure is about disclosable conduct; and
- 16 (d) the integrity commissioner suspects on reasonable grounds that
17 the conduct in the disclosure may constitute corrupt conduct.
- 18 (2) The disclosure is taken to be a corruption complaint made by the
19 person to the commission under section 57 (Anyone may make
20 corruption complaint).

21 **[1.5] New section 218 (1) (ca)**

22 *insert*

- 23 (ca) disclosures under the *Public Interest Disclosure Act 2012* taken
24 to be corruption complaints under section 59A (Certain
25 disclosures under Public Interest Disclosure Act 2012 may be
26 corruption complaints), including a description of each
27 disclosure;

1 **[1.6] Section 246**

2 *substitute*

3 **246 Inspector—acting appointment**

4 *Note* The Speaker has power to appoint an acting inspector if the position is
5 vacant or if the inspector cannot for any reason exercise a function
6 (see [Legislation Act](#), s 209 (1)).

7 (1) The Speaker must not appoint a person to act as inspector unless
8 satisfied that the person has extensive knowledge of, and experience
9 in—

10 (a) criminal investigation or criminal adjudication; or

11 (b) law enforcement or the conduct of investigations; or

12 (c) public administration, governance or government.

13 (2) An acting appointment must be made in consultation with the relevant
14 Assembly committee.

15 (3) An acting appointment must not be for a term longer than 6 months.

16 (4) To remove any doubt, concurrent appointments may be made.

17 **Example—concurrent appointment**

18 If the inspector has a conflict of interest in relation to an investigation, the Speaker
19 may appoint an acting inspector to perform functions of the inspector in relation to
20 the investigation while the inspector continues to perform their other functions.

21 (5) To remove any doubt—

22 (a) subsections (1) and (2) displace the [Legislation Act](#),
23 section 209 (2) and (3); and

24 (b) subsection (3) displaces the [Legislation Act](#), section 221 (1)
25 and (2); and

26 (c) the remaining provisions of the [Legislation Act](#), part 19.3
27 (Appointments) apply in relation to an acting appointment.

1 **[1.7] Section 286 (4) and example**

2 *substitute*

- 3 (4) Section 40 (Commissioner—acting appointment) applies to the
4 appointment of the special investigator as if it were an appointment
5 of an acting commissioner.

6 **[1.8] New section 289 (3) and (4)**

7 *insert*

- 8 (3) For this section, the complainant has not *published* the information if
9 the complainant disclosed the information under the *Public Interest*
10 *Disclosure Act 2012* in the reasonable belief that the information was
11 about disclosable conduct.

- 12 (4) In this section:

13 *disclosable conduct*—see the *Public Interest Disclosure Act 2012*,
14 dictionary.

15 **Part 1.3 Ombudsman Act 1989**

16 **[1.9] Section 5 (3) (b) (ii)**

17 *omit*

18 section 34 (1)

19 *substitute*

20 section 34 (4)

1 **Part 1.4** **Public Sector Management**
2 **Act 1994**

3 **[1.10] Section 143, note**

4 *omit*

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 20 February 2020.

2 Notification

Notified under the [Legislation Act](#) on 2020.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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