

# EXPOSURE DRAFT

Chief Minister

(Prepared by Parliamentary Counsel's Office)

## Public Interest Disclosure Bill 2011

### Contents

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	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
2	Commencement 2
3	Dictionary 2
4	Notes 2
5	Offences against Act—application of Criminal Code etc 3
6	Object of Act 3
<b>Part 2</b>	<b>Important concepts</b>
7	Meaning of <i>public interest disclosure</i> 4

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	Page
8	Meaning of <i>disclosable conduct</i> 4
9	Meaning of <i>public sector entity</i> 6
10	Meaning of <i>public official</i> 7
11	Meaning of <i>disclosure officer</i> 7
12	Meaning of <i>head</i> of a public sector entity 8
<b>Part 3</b>	<b>Making a public interest disclosure</b>
13	Who may make a public interest disclosure? 10
14	How may a public interest disclosure be made? 10
15	Disclosure officer must tell public sector entity about public interest disclosure 10
<b>Part 4</b>	<b>Investigating a public interest disclosure</b>
16	Investigation of public interest disclosure 11
17	Referral to another public sector entity 11
18	Investigating entity may decide not to investigate etc 12
19	Referral to chief police officer 13
20	Investigating entity must keep referring entity informed 13
21	Discloser must be kept informed 14
22	Public sector entity must take action 15
23	Commissioner must be kept informed 15
24	Limitations on disclosure of information 16
<b>Part 5</b>	<b>Public interest disclosure to third parties</b>
25	When disclosure may be made to Legislative Assembly or journalist 17
<b>Part 6</b>	<b>Oversight of public interest disclosures</b>
26	Commissioner's functions 19
27	Commissioner may review decisions 19
28	Commissioner must tell discloser about decision 20
29	Commissioner may make guidelines 20

## EXPOSURE DRAFT

	Page
<b>Part 7</b>	<b>Protections for disclosers</b>
30	Immunity from liability 21
31	Protection from defamation action 21
32	Loss of protection 22
33	Liability for own conduct 22
34	What is a <i>detrimental action</i> ? 23
35	Offence—taking detrimental action 23
36	Damages for detrimental action 24
37	Injunction to prevent detrimental action etc 24
<b>Part 8</b>	<b>Miscellaneous</b>
38	Protection of officials from liability 26
39	Offences—use or divulge protected information 26
40	Annual report of administering agency 29
41	Approved forms 30
42	Regulation-making power 30
43	Repeal of Public Interest Disclosure Act 1994 30
<b>Part 20</b>	<b>Transitional—Public Interest Disclosure Act 1994</b>
100	Act applies to disclosures made after commencement 31
101	Public Interest Disclosure Act 1994 applies to disclosures made before commencement 31
102	Transitional regulations 31
103	Expiry—pt 20 31
104	Ombudsman Act 1989, section 4A (c) 32
<b>Dictionary</b>	<b>33</b>

## EXPOSURE DRAFT



# EXPOSURE DRAFT

**Chief Minister**

(Prepared by Parliamentary Counsel's Office)

## Public Interest Disclosure Bill 2011

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### **A Bill for**

An Act to facilitate public interest disclosures and protect people making those disclosures, and for other purposes

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Public Interest Disclosure Act 2011*.

### 2 Commencement

This Act commences on the day after its notification day.

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

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*head of service*—see the *Public Sector Management Act 1994*, dictionary.' means that the term 'head of service' is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## 6 Object of Act

The object of this Act is to promote the public interest by—

- (a) providing a way for people to make public interest disclosures; and
- (b) ensuring people who make public interest disclosures are protected and treated respectfully; and
- (c) ensuring public interest disclosures are properly investigated and dealt with; and
- (d) ensuring that appropriate consideration is given to the interests of people who make public interest disclosures and the people who are the subject of the disclosures.

# EXPOSURE DRAFT

## Part 2 Important concepts

### 7 Meaning of *public interest disclosure*

- (1) For this Act, a *public interest disclosure* is a disclosure of information by a person about disclosable conduct that—
  - (a) the person honestly believes on reasonable grounds tends to show disclosable conduct; or
  - (b) tends to show the disclosable conduct regardless of whether the person honestly believes on reasonable grounds the information tends to show the conduct.
- (2) For this section, a *disclosure* of information by a person about disclosable conduct does not include a disclosure—
  - (a) that is vexatious; or
  - (b) of information that the discloser knows is false or misleading; or
  - (c) that relates entirely or in substance to a personal grievance of the person; or
  - (d) that relates entirely or in substance to a disagreement in relation to a policy about amounts, purposes or priorities of public expenditure.

*Note* If a disclosure is not a *public interest disclosure*, the discloser of the information is not protected under this Act and there is no obligation under s 16 for a public sector entity to investigate the disclosure.

### 8 Meaning of *disclosable conduct*

- (1) For this Act, *disclosable conduct* means conduct of a public sector entity or public official that is any of the following:
  - (a) official misconduct;



- (b) maladministration that adversely affects a person's interests in a substantial and specific way;
  - (c) a substantial misuse of public funds;
  - (d) a substantial and specific danger to public health or safety;
  - (e) a substantial and specific danger to the environment.
- (2) In this section:

**action** includes inaction.

**conduct** includes an act or omission.

**environment**—see the *Environment Protection Act 1997*.

**maladministration** means an action about a matter of administration that was—

- (a) contrary to the law; or
- (b) unreasonable, unjust, oppressive or improperly discriminatory; or
- (c) negligent; or
- (d) based wholly or partly on improper motives.

**official misconduct** means conduct that could, if proved—

- (a) be an offence; or
- (b) give reasonable grounds for—
  - (i) terminating a person's employment; or
  - (ii) ending a person's appointment; or
  - (iii) terminating a person's contract for services.

*Note* **Official misconduct** includes taking detrimental action (see s 35).

## EXPOSURE DRAFT

***public funds*** means funds that are available to, or under the control of, a public sector entity including public and trust money within the meaning of the *Financial Management Act 1996*.

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

- (a) under lawful care or control; or
- (b) using community facilities or services provided by the public or private sector; or
- (c) in workplaces.

**Examples—par (a)**

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

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**9 Meaning of *public sector entity***

- (1) For this Act, a ***public sector entity*** is any of the following:
  - (a) an ACTPS entity;
  - (b) a Legislative Assembly entity;
  - (c) an entity prescribed by regulation.
- (2) However, a ***public sector entity*** does not include an entity prescribed by regulation.
- (3) In this Act:

***ACTPS entity*** means any of the following:

- (a) an administrative unit;

- (b) a territory authority;
- (c) a territory-owned corporation;
- (d) a subsidiary of a territory-owned corporation;
- (e) a territory instrumentality;
- (f) a statutory office-holder.

**Legislative Assembly entity** means any of the following:

- (a) a member of the Legislative Assembly;
- (b) the Legislative Assembly secretariat;
- (c) a person employed under the *Legislative Assembly (Members' Staff) Act 1989*.

**10 Meaning of *public official***

For this Act, a ***public official*** for a public sector entity is—

- (a) a person who is or has been—
  - (i) an employee of the public sector entity; or
  - (ii) a contractor or volunteer carrying out a function of the public sector entity; or
- (b) a person prescribed by regulation.

**11 Meaning of *disclosure officer***

- (1) For this Act, a ***disclosure officer*** for a public interest disclosure is any of the following:
  - (a) for a disclosure that relates to an ACTPS entity—
    - (i) the commissioner; or
    - (ii) the head of service; or

## EXPOSURE DRAFT

- (iii) the auditor-general; or
  - (iv) the head of an ACTPS entity; or
  - (v) a person declared under subsection (2) for an ACTPS entity;
- (b) for a disclosure that relates to a Legislative Assembly entity—
  - (i) the clerk of the Legislative Assembly; or
  - (ii) the auditor-general; or
  - (iii) a person declared under subsection (2) for a Legislative Assembly entity.
- (2) The head of a public sector entity must declare at least 1 person to be a disclosure officer for public interest disclosures for the entity.
- (3) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.
- (4) For this Act, a disclosure *relates* to a public sector entity if it is about—
  - (a) the entity's conduct; or
  - (b) the conduct of a public official for the public sector entity.

## 12 Meaning of *head* of a public sector entity

For this Act, the *head* of a public sector entity is any of the following:

- (a) for an ACTPS entity—
  - (i) for an administrative unit—the director-general of the administrative unit; and

- (ii) for a territory authority—the person who has responsibility for managing the affairs of the territory authority; and
- (iii) for a territory-owned corporation or a subsidiary of a territory-owned corporation—the person who has responsibility for managing the affairs of the territory-owned corporation; and
- (iv) for a territory instrumentality—the person who has responsibility for managing the affairs of the territory instrumentality; and
- (v) for a statutory office-holder—the statutory office-holder;
- (b) for a Legislative Assembly entity—the clerk of the Legislative Assembly;
- (c) for an entity prescribed by regulation under section 9—the person prescribed by regulation.

## EXPOSURE DRAFT

## Part 3 Making a public interest disclosure

### 13 Who may make a public interest disclosure?

A person (the *discloser*) may make a public interest disclosure.

### 14 How may a public interest disclosure be made?

- (1) A public interest disclosure may be made orally or in writing to a disclosure officer.

*Note* If s 25 applies, a public interest disclosure may be made to a member of the Legislative Assembly or a journalist.

- (2) If a public interest disclosure is made orally to a disclosure officer, the officer must make a written record of the disclosure.

*Note* If a form is approved under s 41 for this provision, the form must be used.

### 15 Disclosure officer must tell public sector entity about public interest disclosure

After receiving a public interest disclosure, the disclosure officer must give a copy of the disclosure to—

- (a) the head of each public sector entity to which the disclosure relates; and
- (b) the commissioner; and
- (c) for a disclosure that relates to an administrative unit—the head of service.

*Note 1* A disclosure officer must comply with this section as soon as possible after receiving a public interest disclosure (see Legislation Act, s 151B).

*Note 2* A disclosure *relates* to an administrative unit if it is about the conduct of the entity or a public official for the entity (see s 11 (4)).

## Part 4                      Investigating a public interest disclosure

### 16                      Investigation of public interest disclosure

If the head of a public sector entity is told about a public interest disclosure that relates to the public sector entity, the entity must investigate the disclosure.

*Note 1*    A public sector entity must investigate a public interest disclosure as soon as possible after the head of the entity is told about it (see Legislation Act, s 151B).

*Note 2*    A disclosure *relates* to a public sector entity if it is about the conduct of the entity or a public official for the public sector entity (see s 11 (4)).

### 17                      Referral to another public sector entity

- (1) This section applies if—
- (a) the head of a public sector entity is told about a public interest disclosure that relates to the public sector entity; and
  - (b) the head of the public sector entity reasonably believes that the disclosure is more appropriately investigated by another public sector entity that has a function or power to investigate.

**Examples—par (b)—appropriate grounds for referring disclosure**

- 1 the disclosure relates to systemic or whole-of-government issues
- 2 there is a significant risk of a person taking detrimental action against a discloser if the disclosure was investigated by the public sector entity to which the disclosure relates

*Note 1*    A disclosure *relates* to a public sector entity if it is about the conduct of the entity or a public official for the public sector entity (see s 11 (4)).

*Note 2*    An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## EXPOSURE DRAFT

- (2) The public sector entity may refer the disclosure to the other public sector entity.
- (3) The other public sector entity must investigate the public interest disclosure.

*Note* A public sector entity must investigate a public interest disclosure as soon as possible after the disclosure is referred to it (see Legislation Act, s 151B).

## **18 Investigating entity may decide not to investigate etc**

An investigating entity may decide not to investigate a public interest disclosure, or may end the investigation of the disclosure, if—

- (a) the discloser has withdrawn the public interest disclosure; or
- (b) the discloser has not told the disclosure officer the discloser's name and contact details and the investigating entity is reasonably satisfied that this lack of information makes it impracticable for the disclosure to be investigated; or
- (c) the investigating entity is reasonably satisfied that the disclosable conduct in the public interest disclosure is trivial; or
- (d) the investigating entity is reasonably satisfied that the disclosed information is wrong in a material way and investigation of the disclosure is not warranted; or
- (e) the investigating entity is reasonably satisfied that the age of the disclosed information makes it impracticable for the disclosure to be investigated; or
- (f) the investigating entity is reasonably satisfied that the substance of the disclosure has already been investigated under the Act or another territory law; or

## **EXPOSURE DRAFT**



- (g) there is a more appropriate way reasonably available to deal with the disclosable conduct in the disclosure.

*Note 1* The investigating entity's decision may be reviewed by the commissioner under s 27.

*Note 2* An investigating entity must tell a referring entity about its decision to not investigate a disclosure, or to end an investigation of the disclosure (see s 20).

## **19 Referral to chief police officer**

The investigating entity for a public interest disclosure must refer the disclosure to the chief police officer if satisfied on reasonable grounds that the disclosable conduct the subject of the disclosure involves, or could involve, an offence.

## **20 Investigating entity must keep referring entity informed**

If the investigating entity for a public interest disclosure is not the public sector entity (the *referring entity*) to which the disclosure relates, the investigating entity must tell the head of the referring entity about—

- (a) if the investigating entity decides not to investigate the disclosure, or to end the investigation of the disclosure—
- (i) the decision; and
  - (ii) the ground mentioned in section 18 for the decision; and
  - (iii) the reasons for making the decision on that ground; or
- (b) if the disclosure is investigated by the investigating entity—the progress and outcome of the investigation.

*Note* A disclosure *relates* to a public sector entity if it is about the conduct of the entity or a public official for the public sector entity (see s 11 (4)).

# **EXPOSURE DRAFT**

**21 Discloser must be kept informed**

- (1) The investigating entity for a public interest disclosure must tell the discloser about—
  - (a) the referral of a public interest disclosure to another public sector entity or to the chief police officer; and
  - (b) the decision not to investigate a disclosure, or to end the investigation of the disclosure, including—
    - (i) the ground mentioned in section 18 for the decision; and
    - (ii) the reasons for making the decision on that ground; and
  - (c) if a disclosure is investigated—
    - (i) the progress of the investigation at least once every 3 months; and
    - (ii) the outcome of the investigation.
- (2) This section does not apply if a discloser has not told the disclosure officer, or investigating entity, the discloser's name and contact details.

*Note* Certain information need not be given to the discloser (see s 24).
- (3) If the disclosure has been referred to the chief police officer, the investigating entity is only required to comply with subsection (1) (b) and (c) to the extent that relevant information has been given to the entity by the chief police officer.

**22 Public sector entity must take action**

- (1) If a head of a public sector entity believes on reasonable grounds that disclosable conduct has occurred, is likely to have occurred or is likely to occur, the entity must take the action necessary and reasonable to—
  - (a) prevent the disclosable conduct continuing or occurring in the future; and
  - (b) if the investigation of the public interest disclosure has been completed—discipline any person responsible for the disclosable conduct.

*Note* **Official misconduct** includes taking detrimental action (see s 35).

- (2) The public sector entity must tell the discloser about any action taken or proposed to be taken.
- (3) This section does not apply if a discloser has not told the disclosure officer, or investigating entity, the discloser's name and contact details.

*Note* Certain information need not be given to the discloser (see s 24).

**23 Commissioner must be kept informed**

- (1) An investigating entity for a public interest disclosure must as soon as practicable tell the commissioner about the following:
  - (a) the referral of the public interest disclosure to another public sector entity or to the chief police officer;
  - (b) a decision not to investigate the disclosure, or to end the investigation of the disclosure and—
    - (i) the ground mentioned in section 18 for the decision; and
    - (ii) the reasons for making the decision on that ground;

**EXPOSURE DRAFT**

- (c) the progress and outcome of an investigation of the disclosure;
  - (d) any action taken, or proposed to be taken, in relation to disclosable conduct the subject of the disclosure.
- (2) If the disclosure has been referred to the chief police officer, the investigating entity is only required to comply with subsection (1) (b), (c) and (d) to the extent that relevant information has been given to the entity by the chief police officer.

## **24 Limitations on disclosure of information**

- (1) A person, including a discloser, need not be told about information in relation to a public interest disclosure if telling the person would—
- (a) be likely to adversely affect a person's safety; or
  - (b) be likely to adversely affect the investigation of an offence or possible offence.
- (2) A discloser need not be told about information in relation to a public interest disclosure if telling the discloser—
- (a) would identify a person that has given information in relation to the disclosure; or
  - (b) could allow the identity of the person to be worked out.
- (3) A discloser must not be told about information in relation to a public interest disclosure if telling the discloser is contrary to a law applying in the Territory.

## **EXPOSURE DRAFT**

## **Part 5                      Public interest disclosure to third parties**

### **25                      When disclosure may be made to Legislative Assembly or journalist**

- (1) This section applies if a discloser has made a public interest disclosure to a disclosure officer and—
  - (a) the discloser has been told that the disclosure will not be investigated; or
  - (b) the discloser has been told that no action will be taken in relation to the disclosure; or
  - (c) the discloser has not been told within 6 months after the day the disclosure is made whether or not the disclosure will be investigated or dealt with; or
  - (d) the discloser has been told the disclosure will be investigated but—
    - (i) has not been told about the progress of the investigation for a period of more than 6 months; or
    - (ii) the investigation has not been completed within 6 months after the date the discloser made the disclosure.
- (2) The discloser may make a disclosure of substantially the same information that was the subject of the public interest disclosure mentioned in subsection (1) to—
  - (a) a member of the Legislative Assembly; or
  - (b) a journalist.

## **EXPOSURE DRAFT**

(3) In this section:

*journalist* means a person who is engaged and active in the publication of news and who may be given information by someone else in the expectation that the information may be published in a news medium.

*news medium* means a medium for the dissemination to the public or a section of the public of news and observations on news.

## Part 6                      Oversight of public interest disclosures

### 26                      Commissioner's functions

The commissioner has the following functions:

- (a) to monitor the management of public interest disclosures by public sector entities;
- (b) to review the way in which public sector entities investigate and deal with public interest disclosures generally, or particular public interest disclosures;
- (c) to give advice about public interest disclosures;
- (d) to undertake, or coordinate the undertaking of, education and training programs about public interest disclosures.

### 27                      Commissioner may review decisions

- (1) The commissioner may, at any time, review—
  - (a) a decision by an investigating entity to refuse to investigate a public interest disclosure, or to end the investigation of the disclosure; and
  - (b) an action taken, or proposed to be taken, by a public sector entity in relation to disclosable conduct the subject of a public interest disclosure.
- (2) The commissioner may ask anyone to give the commissioner information, including protected information, relevant to the investigation of the disclosure.
- (3) A public sector entity or public official must comply with a request made to the entity or official.

## EXPOSURE DRAFT

- (4) After reviewing a decision, the commissioner may—
  - (a) amend the decision; or
  - (b) set aside the decision and substitute a new decision; or
  - (c) take no action.
- (5) After reviewing an action, or proposed action, the commissioner may direct a public sector entity or public official to take, or not take, action in relation to the disclosable conduct.
- (6) In this section:  
*protected information*—see section 39.

**28 Commissioner must tell discloser about decision**

- (1) If the commissioner makes a decision under section 27 (4) (a) or (b), the commissioner must tell the discloser—
  - (a) the commissioner’s decision; and
  - (b) the reasons for the commissioner’s decision.
- (2) This section does not apply if a discloser has not told the disclosure officer, or investigating entity, the discloser’s name and contact details.

*Note* Certain information need not be given to the discloser (see s 24).

**29 Commissioner may make guidelines**

- (1) The commissioner may make guidelines about the way in which public sector entities must deal with public interest disclosures.
- (2) A guideline is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.



## Part 7 Protections for disclosers

### 30 Immunity from liability

If a discloser makes a public interest disclosure—

- (a) the making of the public interest disclosure is not—
  - (i) a breach of confidence; or
  - (ii) a breach of professional etiquette or ethics; or
  - (iii) a breach of a rule of professional conduct; or
  - (iv) if the disclosure is made in relation to a member of the Legislative Assembly—a contempt of the Assembly; and
- (b) the discloser does not incur civil or criminal liability only because of the making of the public interest disclosure; and
- (c) the discloser is not liable to administrative action (including disciplinary action or dismissal) only because of the making of the public interest disclosure.

### 31 Protection from defamation action

Without limiting section 30, in a proceeding for defamation, a discloser who makes a public interest disclosure has a defence of qualified privilege for publishing the information disclosed.

## EXPOSURE DRAFT

**32 Loss of protection**

- (1) This section applies if—
  - (a) a discloser makes a public interest disclosure; and
  - (b) a person investigating the disclosure under this Act asks the discloser for assistance in the investigation by providing information in a stated manner and in a stated period of time; and
  - (c) the discloser fails, without reasonable excuse, to provide the assistance.
- (2) This section also applies if the discloser gives information to a person investigating a public interest disclosure that the discloser knows is false or misleading.
- (3) The discloser forfeits the protections under this Act in relation to the public interest disclosure.
- (4) A court may make an order that subsection (3) does not apply if the court considers that the discloser's conduct—
  - (a) has not materially prejudiced the investigation of the public interest disclosure; and
  - (b) is of a minor nature.

**33 Liability for own conduct**

- (1) A person's liability for the person's own conduct is not affected by the person's disclosure of that conduct under this Act.
- (2) In this section:

*liability* includes civil or criminal liability or any liability arising from an administrative action (including disciplinary action or dismissal).

**34 What is a *detrimental action*?**

For this Act, *detrimental action* is action that involves—

- (a) discriminating against a person by treating, or proposing to treat, the person unfavourably in relation to the person’s reputation, career, profession, employment, trade or profession; or
- (b) harassing or intimidating a person; or
- (c) injuring a person; or
- (d) damaging a person’s property.

**35 Offence—taking detrimental action**

- (1) A person commits an offence if the person (the *retaliator*) takes detrimental action because of a public interest disclosure.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) For this Act, a retaliator *takes* a detrimental action because of a public interest disclosure if the retaliator takes, or threatens to take, a detrimental action against someone else because—
  - (a) a person has made, or intends to make, a public interest disclosure; or
  - (b) the retaliator believes that a person has made or intends to make a public interest disclosure.
- (3) In determining whether a retaliator has taken detrimental action for a public interest disclosure, it is sufficient if a reason mentioned in subsection (2) is a contributing reason.

**36 Damages for detrimental action**

- (1) A person who takes detrimental action against someone else is liable in damages to anyone who suffers detriment as a result.
- (2) A detrimental action is a tort and damages may be recovered in a proceeding in a court of competent jurisdiction.
- (3) Any remedy that may be given by a court for a tort, including exemplary damages, may be given by a court in a proceeding under this section.
- (4) The right of a person to bring proceedings for damages under this section does not affect any other right or remedy available to the person arising from the detrimental action.

**37 Injunction to prevent detrimental action etc**

- (1) On application, the Supreme Court may—
  - (a) if satisfied that a person has taken detrimental action—order the person who took the detrimental action to remedy the action; or
  - (b) if satisfied that a person is taking, or is likely to take, detrimental action—grant an injunction to prevent the detrimental action being taken.
- (2) An application may be made by—
  - (a) the commissioner; or
  - (b) the discloser; or
  - (c) a person against whom the detrimental action has been or is likely to be taken.

**EXPOSURE DRAFT**

- (3) The Supreme Court may grant an interim injunction restraining a person from taking detrimental action before deciding an application for an injunction under this section.

## **EXPOSURE DRAFT**

## Part 8 Miscellaneous

### 38 Protection of officials from liability

- (1) An official is not civilly liable for anything done or omitted to be done honestly and without recklessness—
  - (a) in the exercise of a function under this Act; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from subsection (1), attach to an official attaches instead to the Territory.
- (3) In this section:

*official* means—

- (a) the commissioner; or
- (b) a disclosure officer; or
- (c) a person authorised under this Act to do or not to do a thing.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

### 39 Offences—use or divulge protected information

- (1) A person to whom this section applies commits an offence if—
  - (a) the person uses information; and
  - (b) the information is protected information about someone else; and

- (c) the person is reckless about whether the information is protected information about someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person to whom this section applies commits an offence if—
  - (a) the person does something that divulges information; and
  - (b) the information is protected information about someone else; and
  - (c) the person is reckless about whether—
    - (i) the information is protected information about someone else; and
    - (ii) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsections (1) and (2) do not apply if the information is used or divulged—
  - (a) under this Act or another territory law; or
  - (b) in relation to the exercise of a function, by a person to whom this section applies, under this Act or another territory law; or
  - (c) in a court proceeding.

## EXPOSURE DRAFT

- (4) Subsections (1) and (2) do not apply to the using or divulging of protected information about a person with the person's consent.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) and s (4) (see Criminal Code, s 58).

- (5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law applying in the territory.

- (6) In this section:

***court*** includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

***divulge*** includes—

- (a) communicate; or
- (b) publish.

***person to whom this section applies*** means—

- (a) a person who is or has been—
  - (i) the commissioner; or
  - (ii) a disclosure officer; or
- (b) anyone else who has exercised a function under this Act.

***produce*** includes allow access to.



***protected information*** means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

**Examples—protected information**

- 1 information given to a disclosure officer whether or not it is a public interest disclosure
- 2 information given to an investigating entity about a public interest disclosure by someone other than the discloser
- 3 information that would identify the discloser or would allow the discloser's identity to be worked out
- 4 information that would identify a person, other than the discloser, who has given information to an investigating entity about a public interest disclosure or would allow the person's identity to be worked out

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

***use***, in relation to information, includes make a record of the information.

#### **40 Annual report of administering agency**

- (1) The annual report of the administering agency under the *Annual Reports (Government Agencies) Act 2004* must include details of the following for the period covered by the report:
  - (a) the total number of public interest disclosures made;
  - (b) the total number of investigations carried out;
  - (c) the total number of investigations completed;
  - (d) the average time taken for completed investigations;
  - (e) anything else prescribed by regulation.

## **EXPOSURE DRAFT**

(2) However, the annual report must not include protected information.

(3) In this section:

*administering agency* means the administrative unit allocated responsibility for this Act under the *Public Sector Management Act 1994*, section 14 (1) (b) (Ministerial responsibility and functions of administrative units).

*protected information*—see section 39.

#### **41 Approved forms**

- (1) The commissioner may approve forms for this Act.
- (2) If the commissioner approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see the Legislation Act, s 255.

(3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

#### **42 Regulation-making power**

The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

#### **43 Repeal of Public Interest Disclosure Act 1994**

The *Public Interest Disclosure Act 1994* (A1994-108) is repealed.

## Part 20 Transitional—Public Interest Disclosure Act 1994

### 100 Act applies to disclosures made after commencement

This Act applies to a public interest disclosure made after the commencement of this Act, regardless of when the conduct the subject of the disclosure is alleged to have happened.

### 101 Public Interest Disclosure Act 1994 applies to disclosures made before commencement

The *Public Interest Disclosure Act 1994* as in force immediately before the commencement of this Act continues to apply to a public interest disclosure made before the commencement of this Act.

### 102 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

### 103 Expiry—pt 20

This part expires 5 years after the day it commences.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

## EXPOSURE DRAFT

**104 Ombudsman Act 1989, section 4A (c)**

*omit*

**EXPOSURE DRAFT**

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## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- auditor-general
- Chief Justice
- Chief Magistrate
- judge
- Legislative Assembly
- magistrate
- Minister (see s 162)
- statutory office-holder
- Supreme Court
- territory authority
- territory instrumentality
- territory law
- territory-owned corporation
- the Territory.

*ACTPS entity*—see section 9.

*commissioner* means the commissioner for public administration.

*contact details*, for a discloser, means details of how a disclosure officer or investigating entity may contact the discloser about the public interest disclosure.

*detrimental action*—see section 34.

*disclosable conduct*—see section 8.

*discloser*—see section 13.

## EXPOSURE DRAFT

**disclosure officer**, for a public interest disclosure—see section 11.

**head**, of a public sector entity—see section 12.

**head of service**—see the *Public Sector Management Act 1994*, dictionary.

**investigating entity**, for a public interest disclosure, means—

- (a) a public sector entity to whom the disclosure relates; or
- (b) if the public sector entity has referred the disclosure to another public sector entity—the other entity.

**Legislative Assembly entity**—see section 9.

**Legislative Assembly secretariat**—see the *Public Sector Management Act 1994*, dictionary.

**public interest disclosure**—see section 7.

**public official**, for a public sector entity—see section 10.

**public sector entity**—see section 9.

**relates**, to a public sector entity—see section 11 (4).

**takes**, a detrimental action—see section 35 (2).

## EXPOSURE DRAFT

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2011.

**2 Notification**

Notified under the Legislation Act on 2011.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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# EXPOSURE DRAFT