

2020

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

PUBLIC INTEREST DISCLOSURE AMENDMENT BILL 2020

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Andrew Barr MLA
Chief Minister**

PUBLIC INTEREST DISCLOSURE AMENDMENT BILL 2020

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

INTRODUCTION

This explanatory statement (the statement) relates to the Public Interest Disclosure Amendment Bill 2020 (the Bill) as presented to the ACT Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision - this being a task for the courts.

An independent review of the PID Act was delivered to the Government on 30 September 2019. The report presented a comprehensive assessment of the PID Act, noting the complexity of the current whistleblowing arrangements in the ACT and identifying where sections of the PID Act and the *Integrity Commission Act 2018* (the IC Act) conflict or overlap. The recommendations from the final report have informed the legislative amendments put forward in this Bill.

OVERVIEW OF THE BILL

The Bill proposes amendments to the PID Act that will:

- (a) support a pro-disclosure culture and system that provides clarity to disclosers and disclosure officers;
- (b) require all disclosures under the PID Act be forwarded to the Integrity Commissioner creating a single point of oversight for serious wrongdoing disclosures and recognise the Integrity Commission as the pre-eminent integrity body in the ACT –the Integrity Commissioner would determine if he wishes to deal with a matter, dismiss it, or refer it to another body;
- (c) deliver improvements to the integrity framework, including a triage approach to receiving disclosures, consistent assessments and application of the law by appropriately skills officers, and a whole-of-system data collection enabling the scheme to be both reactive and proactive – reactive by systematic and thorough responses; and proactive through improved whole-of-system analysis and identification of risk;
- (d) reduce the scope of the PID Act and remove the overlap with the IC Act; and

- (e) commit public sector agencies to a pro-disclosure culture and to leading by example by: promoting education on notification obligations and protections, committing to transparency, and ensuring appropriate skilled investigations occur.

CONSISTENCY WITH HUMAN RIGHTS

Rights engaged

The Bill engages but does not unreasonably limit rights protected under the Human Rights Act 2004 (HR Act).

Rights protected

The Bill provides protection for the right to freedom of expression as it safeguards the right of ACT public service employees to disclose otherwise confidential information about maladministration and substantial and specific dangers to public health or safety, and the environment through appropriate channels to ensure that this can be investigated and remedied.

Rights Limited

The Bill engages and potentially limits the right to freedom of expression (section 16) and the right to privacy and reputation (section 12).

1. *Nature of the right and the limitation (s28(a) and (c))*

Freedom of expression

The right to freedom of expression in section 16 provides that everyone has the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds.

The right to freedom of expression applies to sharing of information in the workplace and in respect of relations between employer and employee. However, it is recognised that freedom of expression may be limited in an employment context as employees owe a duty of loyalty, reserve and discretion to their employer, particularly where the employee is a public servant entrusted with confidential government information.

The PID Act established a scheme for appropriate and protected disclosure by employees of certain employment information which would otherwise be confidential, to ensure that maladministration and substantial and specific dangers to public health or safety, and the environment can be appropriately identified and investigated.

The changes introduced by this Bill are intended to recognise the role of the Integrity Commission and to further enhance the pro-disclosure culture fostered by the public interest disclosure scheme. The Bill ensures greater transparency of

the handling of disclosable conduct through the referral of all disclosures to the Integrity Commissioner.

The measures introduced in this Bill provide for disclosures to be made through appropriate channels to ensure proper investigation and to provide appropriate protection for sensitive government information and the privacy and reputation of others.

If a person makes disclosures outside those protected channels or discloses information that does not fall within the scope of disclosable conduct, they will not have the benefit of the protections of the scheme. These restrictions potentially limit the right to freedom of expression, but are reasonable and proportionate limitations.

The Bill provides that disclosures relating to corrupt conduct should be made to the Integrity Commissioner but may also be referred to the Commissioner. The IC Act was developed with considerable attention to human rights protections and safeguards.

A person making a disclosure relating to corrupt conduct under the IC Act will have the same protections as a person making a public interest disclosure under the PID Act.

Privacy and reputation

Section 12 of the HR Act provides that everyone has the right not to have his or her privacy, family home or correspondence interfered with unlawfully or arbitrarily and not to have his or her reputation unlawfully attacked.

The PID Act and the IC Act provide protections for people making disclosures from any civil liability, including liability for defamation. This could limit the privacy and reputation rights of a person who is the subject of a report about disclosable conduct. The Bill amends the IC Act to provide that a person making disclosure that is actually a report of corrupt conduct will have protection from liability from defamation, and that information will not be deemed to be 'published' if it is made through appropriate channels for disclosable conduct.

While these provisions engage the right to privacy and reputation, any limitations on this right are reasonable and proportionate. There are a range of protections for persons subject to investigation under the PID Act and the IC Act.

2. Legitimate purpose (s28(b))

The measures introduced by the Bill serve a legitimate purpose in reducing overlap between the public interest disclosure and Integrity Commission regimes and ensuring that there will be greater transparency and coordination in relation to the investigation of maladministration and corrupt conduct.

Limitations on the way in which a person may make a public interest disclosure or report of corrupt conduct through requiring that disclosures be made through appropriate channels are necessary to ensure that sensitive government information is appropriately protected. It is also intended to ensure that the

privacy and reputation of individuals is not unreasonably limited through public disclosure of information that has not been subject to appropriate investigation.

3. *Rational connection between the limitation and the purpose (s28(d))*

Providing appropriate channels and procedures for disclosures, and clarifying the scope of appropriate disclosures will encourage public employees to use appropriate mechanisms for disclosures and for the investigation and resolution of workplace grievances that do not have the character of disclosable conduct.

4. *Proportionality (s28 (e))*

A range of safeguards have been included in the Bill to ensure that existing protections for people making disclosures under the PID Act will apply equally to disclosures of corrupt conduct made directly to, or referred to the Integrity Commissioner. This will ensure that a person will not be exposed to any detriment if they inadvertently make a disclosure of corrupt conduct through channels intended for disclosable conduct, rather than making a report directly to the Integrity Commissioner. It is recognised that an individual making a disclosure in good faith may not be in a position to determine whether the conduct is maladministration or corrupt conduct.

The PID Act and IC Act also provide for a range of robust safeguards for the privacy and reputation rights of an individual who is the subject of a report about their conduct. In particular they do not protect disclosures made in bad faith, relating to personal grievances or made outside appropriate and protected channels.

Public Interest Disclosure Amendment Bill 2020

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Public Interest Disclosure Amendment Bill 2020**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Gordon Ramsay MLA
Attorney-General

CLAUSE NOTES

Clause 1 – Name of Act

This is a technical clause that sets out the name of the Act as the *Public Interest Disclosure Amendment Act 2020* (the Amendment Act).

Clause 2 – Commencement

This clause provides that the Amendment Act will commence on a day fixed by the Minister by written notice.

Clause 3 – Legislation amended

This clause provides that the Bill amends the *Public Interest Disclosure Act 2012* (the PID Act). The clause also notes that other legislation (as set out in Schedule 1) is also amended.

Clause 4 – Object of Act Section 6(a)

This clause amends the object of the PID Act. The object of “providing a way for people to make public interest disclosures” has been recast to “providing a way for people to disclose disclosable conduct”.

This amendment seeks to promote a pro-disclosure culture by encouraging people to disclose disclosable conduct. The determination of whether a disclosure is in fact a public interest disclosure is to be made by the Integrity Commissioner.

Clause 5 – Sections 7 and 8

This clause substitutes sections 7 and 8 of the PID Act.

The meaning of the term *public interest disclosure* in section 7 of the PID Act has been amended. Under section 7, a disclosure is taken to be a public interest disclosure following assessment by the Integrity Commissioner under section 17A(3) or in certain circumstances under section 27(4) where the disclosure of disclosable conduct may be given to a member of the Legislative Assembly or a journalist. The note to section 7 also identifies that disclosers and witnesses for public interest disclosures are protected from liability.

The meaning of the term *disclosable conduct* in section 8 of the PID Act has been amended to remove overlap with the definition of *corrupt conduct* as set out in the IC Act. The focus of *disclosable conduct* is now on maladministration and substantial and specific dangers to public health or safety, or the environment. The meaning of *disclosable conduct* has also been amended to exclude personal work-related grievances which can be dealt with through other existing mechanisms.

As maladministration is one of the main focuses of the PID Act, its meaning has been clarified in the amended section 8 to emphasise that it involves a substantial mismanagement of public resources or public funds or a substantial mismanagement

in the performance of official functions. The terms *conduct* and *disciplinary action* have been removed from section 8 as they are no longer used in the section.

Clause 6 – Meaning of *disclosure officer* Section 11(1)

This clause identifies that disclosure officers will receive disclosures of disclosable conduct, rather than public interest disclosures. This reflects the amendment in section 17 of the PID Act, where a disclosure becomes a public interest disclosure following assessment by the Integrity Commissioner.

Clause 7 – Section 11(1)(a)(i)

This clause provides clarification of the term ‘the commissioner’ in section 11(1)(a)(i). With the changes in roles in the PID Act proposed by the Bill, this amendment confirms that the Public Sector Standards Commissioner continues to be a disclosure officer.

Clause 8 – Section 11(1)(a)(vii) and (b)(v)

This clause amends sections 11(1)(a)(vii) and (b)(v) to reflect the amendment discussed in clause 9 whereby disclosure officers in ACTPS entities and Legislative Assembly entities will be ‘nominated’ under section 11(2) rather than being ‘declared’.

Clause 9 – Section 11(2) and (3) and note

This clause amends the requirement in section 11 that the head of a public sector entity must declare, via notifiable instrument, at least one person to be a disclosure officer for the entity. The independent review of the PID Act identified that the declaration of disclosure officers via notifiable instrument seemed unnecessary and added red tape to the process.

Heads of public sector entities will now nominate disclosure officer/s for their entity and publish the disclosure officer/s contact details on the entity’s website. Details of disclosure officers must also be given to the Integrity Commissioner. There is also a requirement for the Integrity Commissioner to publish disclosure officers’ details on their website.

Clause 10 – Meaning of *relates to an entity* Section 12

This clause expands the meaning of *relates to an entity* in section 12 of the PID Act.

The term ‘disclosure of disclosable conduct’ has been added to cover the process of a person disclosing disclosable conduct before the determination by the Integrity Commissioner that a disclosure is a public interest disclosure.

Clause 11 – Part 3

This clause substitutes Part 3 of the PID Act.

The title of part has been renamed from 'Making a public interest disclosure' to 'Disclosing disclosable conduct'. This reflects the process of disclosers disclosing disclosable conduct before an assessment as to whether the disclosure is a public interest disclosure is made by the Integrity Commissioner. Sections 14, 15 and 16 of the PID Act have also been amended to reflect this process.

Section 16 has also been amended to include that a disclosure of disclosable conduct may also be made using any form of electronic communication. Electronic communication is defined as meaning communication by telephone, email, fax or any other electronic means.

Section 17 describes the process of giving a disclosure of disclosable conduct to the Integrity Commissioner. A disclosure officer is required to satisfy themselves, on reasonable grounds, that the disclosure is about disclosable conduct (ie maladministration or substantial and specific dangers to public health or safety, or the environment) and that it has been disclosed in good faith. If the disclosure officer is satisfied on both of these counts, they are required to provide a copy of the disclosure to the Integrity Commissioner along with the disclosers contact details (unless the disclosure is made anonymously). The disclosure officer is also required to inform the discloser when the disclosure is given to the Integrity Commissioner.

Section 17A sets out the criteria the Integrity Commissioner must use to determine if a disclosure of disclosable conduct is a public interest disclosure. This requires an assessment of whether the disclosure relates to maladministration or substantial and specific dangers to public health or safety, or the environment. A public interest test has been incorporated into the assessment process. The purpose of the test is to ensure that the discloser is not solely or personally affected by the disclosure matter and strengthens the exclusion of personal employment-related grievances from the scope of this legislation. The conduct relating to the disclosure must affect others and must also be genuinely in the public interest. The Integrity Commissioner is also required consider if the disclosure is frivolous or vexatious.

If the Integrity Commissioner is satisfied the criteria described above are met, the disclosure of disclosable conduct is taken to be a public interest disclosure. This has the effect that the protections in Part 7 of the PID Act are taken to apply to the discloser from the day the conduct was disclosed.

If the Integrity Commissioner makes the assessment that the criteria in section 17A have not been met and a disclosure of disclosable conduct is not a public interest disclosure, section 17B requires the Integrity Commissioner to write to disclosure officers and disclosers to inform them of this. The disclosure officer and discloser must also be advised that the protections in Part 7 of the PID Act do not apply.

Clause 12 – Part 4 heading

The clause amends the heading of Part 4 of the PID Act to 'Dealing with a public interest disclosure' rather than 'Investigating a public interest disclosure'. The focus of Part 4 of the PID Act is now broader than the investigation of a public interest disclosure which has resulted in the renaming of the Part.

Clause 13 – Sections 18 to 20

This clause amends sections 18, 19 and 20 of the PID Act.

Section 18 defines the term *investigating entity* for Part 4 of the Act. The investigating entity for an investigation of a public interest disclosure can be either the Integrity Commissioner or the entity to which the Integrity Commissioner refers the disclosure to for investigation.

Section 19 requires the Integrity Commissioner to either investigate public interest disclosures or refer public interest disclosures to another entity for investigation. The other entities are: the head of a public sector entity, the head of service, the ombudsman, the parliamentary standards commissioner or the public sector standards commissioner. If a public interest disclosure is referred for investigation, the Integrity Commissioner is required to provide the entity with a copy of the disclosure and the contact details of the discloser (unless the disclosure was made anonymously).

Under section 19A, the Integrity Commissioner is required to write to a discloser to inform them that their disclosure will be investigated. The Integrity Commissioner must also provide: the contact details of the investigating entity as well as the date of referral, information in relation to the obligations to keep the discloser informed, the circumstances where the discloser can give the disclosure to a member of the Legislative Assembly or a journalist and the protections under the PID Act.

Section 20 provides that an investigating entity must investigate a public interest disclosure and comply with the rules of natural justice and procedural fairness. It also sets out the circumstances under which an investigation may be ended. The circumstances include: the discloser withdrawing the disclosure, if the disclosure was made anonymously and the investigating entity is reasonably satisfied this makes it impracticable to investigate the disclosure and if the discloser does not respond to any request for assistance with the investigation by the investigating entity.

Clause 14 – Sections 22 and 23

This clause substitutes sections 22 and 23 of the PID Act with a new section 23.

Section 23 requires the investigating entity for a public interest disclosure to keep a discloser informed about a range of matters relating to an investigation. These matters include: the progress of the investigation (at least once every three months),

the outcome of an investigation (including any action taken), if the disclosure has been referred to the Chief Police Officer or if the investigation has been ended. Section 23 does not apply if the disclosure was made anonymously or if the discloser has asked not to be kept informed about the disclosure.

Clause 15 – Public sector entity must take action Section 24(1)(b), except note

This clause clarifies section 24(1)(b) by linking the investigation of a public interest disclosure to the disclosable conduct that has been disclosed and disciplinary action that may be taken against the person responsible for the disclosable conduct.

Clause 16 – Section 24(2) and (3) and note

This clause amends sections 24(2) and (3) and requires the head of the public sector entity to inform both the Integrity Commissioner and the discloser for the public interest disclosure about any action proposed to be taken to prevent disclosable conduct continuing or occurring in the future. Note 1 to the section identifies that section 26 of the PID Act places limitations on obligations to keep people informed.

Clause 17 – Section 25 heading

This clause amends the heading of section 25 to clarify that the section relates to the Integrity Commissioner given the role the Integrity Commission will have under the Act.

Clause 18 – Section 25(1)

This clause amends section 25(1) to address the situation where the investigating entity is not the Integrity Commissioner.

Clause 19 – Section 25(1)(b)

This clause amends section 25(1)(b) by removing the ability for an investigating entity (who is not the Integrity Commissioner) to refer a public interest disclosure to the head of another public sector entity. The provision to refer a public interest disclosure to the Chief Police Officer is retained.

Clause 20 – Section 25(1)(d)

This clause amends section 25(1)(d) by removing the ability for an investigating entity (who is not the Integrity Commissioner) to decide not to investigate the disclosure. The provisions relating to ending the investigation of a disclosure are retained.

Clause 21 – Section 25(1)(d)(iii)

This clause amends section 25(1)(d)(iii) to update a cross reference that has been affected by the amendments to section 20 in clause 13 above.

Clause 22 – Section 25(2)

This clause amends section 25(2) to clarify that public interest disclosures may be forwarded to the Chief Police Officer, rather than disclosures of disclosable conduct.

Clause 23 – Limitations on obligations to keep people informed etc Section 26(1)

This clause amends section 26(1) to clarify that the limitations on obligations to keep people informed apply once the disclosure of disclosable conduct has been determined to be a public interest disclosure.

Clause 24 – Section 26(1), examples

This clause replaces the examples in section 26(1) with an example that reflects the role of the Integrity Commissioner in relation to public interest disclosures.

Clause 25 – Section 26(3) and (4)

This clause replaces sections 26(3) and (4) with a single section that applies to disclosers of public interest disclosures (as opposed to disclosers of disclosable conduct).

Section 26(3) has been amended to clarify the connection between the discloser and the public interest disclosure and to align the clause with current drafting practice.

The provision in section 26(4) whereby a discloser must not be told information in relation to the public interest disclosure, if telling the discloser is contrary to a law in force in the ACT, has been incorporated into section 26(3).

Clause 26 – New Section 26A

This clause inserts a new section 26A which describes the process which must be followed if a person discloses disclosable conduct about the Integrity Commissioner. In this situation, the matter is to be dealt with under section 257 of the IC Act and the disclosure officer is required to give a copy of the disclosure of disclosable conduct to the Inspector of the Integrity Commission.

Clause 27 – Section 27

This clause substitutes section 27 with two sections (section 27 and section 27A) that describe when disclosures of disclosable conduct and public interest disclosures can be given to a member of the Legislative Assembly or a journalist.

Section 27 provides the circumstances where disclosures of disclosable conduct can be given to a member of the Legislative Assembly or a journalist. If a person who discloses disclosable conduct has not received notice from the Integrity Commissioner that the disclosure is not taken to be a public interest disclosure; or notice of an investigation into the disclosure from the Integrity Commissioner within

three months of the disclosure, they may disclose the disclosable conduct to a member of the Legislative Assembly or a journalist.

Section 27A provides the circumstances where public interest disclosures can be given to a member of the Legislative Assembly or a journalist. If a discloser of a public interest disclosure has been advised by the Integrity Commissioner that a disclosure will be investigated but has not received an update for more than three months; or if a public interest disclosure is investigated and there is clear evidence that the disclosable conduct has occurred, or was likely to have occurred and the discloser is advised that no action will be taken in relation to the disclosable conduct, they may give the public interest disclosure to a member of the Legislative Assembly or a journalist.

Clause 28 – Section 28

This clause substitutes section 28 and sets out additional functions assigned to the Integrity Commissioner under the PID Act.

These functions were previously assigned to the Public Sector Standards Commissioner, however, they are to be assigned to the Integrity Commissioner to reflect the Commissioner's position as the pre-eminent integrity body in the ACT.

The functions have also been expanded to cover both the disclosure of disclosable conduct and public interest disclosures.

Clause 29 – Section 29 heading

This clause amends the heading of section 29 to clarify that the section relates to the Integrity Commissioner given the role the Integrity Commission will have under the Act.

Clause 30 – Section 29(1)

This clause amends section 29(1) to clarify that the section relates to the Integrity Commissioner given the role the Integrity Commission will have under the Act.

Clause 31 – Section 29(1)(a)

This clause amends section 29(1)(a) to remove the provision that the Integrity Commissioner may review a decision by an investigating entity to refuse to investigate a public interest disclosure.

This reflects the amendments in the Bill to section 20 which requires investigating entities to investigate public interest disclosures. Investigating entities are no longer able to refuse to investigate a public interest disclosure.

The Integrity Commissioner may still review a decision by an investigating entity to end the investigation of a public interest disclosure.

Clause 32 – Section 29(2)

This clause amends section 29(2) to clarify that the section relates to the Integrity Commissioner given the role the Integrity Commission will have under the Act.

Clause 33 – Section 29(4) and (5)

This clause amends section 29(4) and (5) to clarify that the section relates to the Integrity Commissioner given the role the Integrity Commission will have under the Act.

Clause 34 – Section 30 heading

This clause amends the heading of section 30 to clarify that the section relates to the Integrity Commissioner given the role the Integrity Commission will have under the Act.

Clause 35 – Section 30(1)

This clause amends section 30(1) to clarify that the section relates to the Integrity Commissioner given the role the Integrity Commission will have under the Act.

Clause 36 – Section 30(1)(b)

This clause expands the provisions in section 30(1)(b) to enable the Integrity Commissioner to provide a report to the Minister about how the disclosure of disclosable conduct or public interest disclosures are dealt with by a public sector entity.

Clause 37 – Section 30(2)

This clause amends section 30(2) to clarify that the section relates to the Integrity Commissioner given the role the Integrity Commission will have under the Act.

Clause 38 – Section 31 heading

This clause amends the heading of section 31 to clarify that the section relates to the Integrity Commissioner given the role the Integrity Commission will have under the Act.

Clause 39 – Section 31(1)

This clause amends section 31(1) by clarifying that the section relates to the Integrity Commissioner given the role the Integrity Commission will have under the Act.

This clause also amends section 31(1) to clarify the connection between the discloser of a public interest disclosures (as opposed to a discloser of disclosable conduct).

Clause 40 – Section 31(2)(a)

This clause amends section 31(2)(a) to reflect the amended definition of ‘discloser’ in the dictionary (see clause 62 of this explanatory statement).

Clause 41 –Section 31(2), note

This clause amends the note to section 31(2) to clarify the connection between the discloser of a public interest disclosures (as opposed to a discloser of disclosable conduct).

Clause 42 – Section 32 heading

This clause amends the heading of section 32 to clarify that the section relates to the Integrity Commissioner given the role the Integrity Commission will have under the Act.

Clause 43 – Section 32(1)

This clause amends section 32(1). Under this section, the Integrity Commissioner is required to issues guidelines. This was previously the role of the Public Sector Standards Commissioner. The change reflects the role the Integrity Commission will have under the Act.

As well as addressing the way in which public sector entities with disclosures of disclosable conduct and public interest disclosures, the guidelines must also address the way public interest disclosures are investigated.

Clause 44 – Sections 33 and 34

This clause substitutes sections 33 and 34.

Section 33 requires the Integrity Commission to make procedures for dealing with disclosures of disclosable conduct and public interest disclosures. This was previously the responsibility of heads of public sector entities and the heads of public sector entities were required to obtain approval for their entity’s guidelines from the Public Sector Standards Commissioner. To streamline the process and provide consistency in process across public sector entities, public sector entities will adopt the procedures issued by the Integrity Commissioner.

Section 34 sets out the role of the Ombudsman. There have been minor changes to the Ombudsman’s role as a result of the amendments to the PID Act reflecting the role of the Integrity Commissioner. Under this section a person may complain to the Ombudsman about an action taken by the head of a public sector entity, the head of service, the parliamentary standards commissioner or the public sector standards commissioner in relation to a disclosure of disclosable conduct or a public interest disclosure. The section articulates the functions the Ombudsman may exercise which include providing advice, monitoring the management of disclosures of disclosable conduct or public interest disclosures, reviewing how disclosures of

disclosable conduct and public interest disclosures have been dealt with or investigated and ensuring just outcomes for disclosers.

Clause 45 – Part 7 heading

This clause amends the heading to Part 7 to reflect that protections under the PID Act have been extended to witnesses.

Clause 46 – Section 36

This clause amends section 36 to link a defamation proceeding to a public interest disclosure and to confirm that the discloser of the public interest disclosure has the defence of absolute privilege for publishing the information disclosed.

Clause 47 – Loss of protection Section 37

This clause amends section 37 to confirm that the section applies to the discloser of a public interest disclosure.

Clause 48 – Section 37(1)(a)

This clause amends section 37(1)(a) to clarify that the section also applies to a discloser for a public interest disclosure who gives information to a person investigating the disclosure, about part of the disclosure the discloser knows is false or misleading.

Clause 49 – Section 37(1)(b)

This clause amends section 37(1)(b) to clarify that the section also applies to a situation where part of a disclosure is vexatious.

Clause 50 – Section 37(2)

This clause amends section 37(2) to clarify that a discloser may also forfeit protections under the PID Act in relation to part of a public interest disclosure.

Clause 51 – Damages for detrimental action Section 41(1)

This clause amends section 41(1) to link the detrimental action taken by a person to someone else to a public interest disclosure.

Clause 52 –Section 42

This clause amends section 42 and inserts section 42A.

Sections 42(1)(a) and (b) and section 42(3) are amended to link the detrimental action taken by a person to a public interest disclosure. Section 42(2)(a) is amended clarifying that the section relates to the Integrity Commissioner given the role the Integrity Commission will have under the Act and also linking the discloser to a public interest disclosure.

Section 42A has been inserted to extend the protections under the Act to witnesses, where those witnesses are called upon to assist an investigation. Section 42A protects a person from criminal or civil liability when they assist an investigation at the request of an investigating entity.

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

This clause amends the definition of official in paragraph (a) of section 43(3) to clarify that the definition relates to the Integrity Commissioner given the role the Integrity Commission will have under the Act.

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

This clause amends the definition of ‘official’ in paragraph (d) of section 43(3) to clarify that reference is being made to an investigating entity other than the Integrity Commissioner.

This is consequential to the amendment in clause 53 which includes the Integrity Commission in this definition.

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

This clause amends the definition of ‘person to whom this section applies’ in paragraph (a)(i) of section 44(6) to clarify that the definition relates to the Integrity Commissioner given the role the Integrity Commission will have under the Act.

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

This clause amends the definition of ‘person to whom this section applies’ in paragraph (a)(iv) of section 44(6) to clarify that reference is being made to an investigating entity other than the Integrity Commissioner.

This is consequential to the amendment in clause 55 which includes the Integrity Commission in this definition.

Clause 57 – Section 44(6) definition of *protected information*, examples

This clause amends the examples in the definition of protected information in section 44(6) to clarify the connection between the discloser and the public interest disclosure (as opposed a discloser of disclosable conduct).

Clause 58 – New section 45

This clause inserts section 45 which sets out annual reporting requirements for the Integrity Commissioner’s in relation to disclosures of disclosable conduct and public interest disclosures.

Under section 45, the Integrity Commissioner must incorporate information relating to a range of issues including: disclosures of disclosable conduct, public interest disclosures, investigations, referrals to the Chief Police Officer and information about education and training programs.

The collection of this data will enable the effectiveness of the PID Act to be assessed.

Clause 59 – Approve Forms Section 46

This clause repeals section 46.

Since the introduction of the PID Act in 2012, no forms have been approved for this Act. Approved forms are effectively redundant with agencies moving to online transactions and having forms accessible on websites.

Clause 60 – New section 48

This clause inserts section 48 which requires the PID Act to be reviewed at the same time as the IC Act.

Section 303 of the IC Act prescribes that a review of the IC Act must review the Act as soon as practicable three years after the commencement of the section.

Section 303 commenced on 1 December 2019, meaning the review of both the IC Act and the PID Act will need to commence as soon as practicable after 1 December 2022.

Section 48 also requires the Minister to present a report on this review to the Legislative Assembly at the same time the Minister presents a report on the review of the *Integrity Commission Act 2018*.

Clause 61 – Dictionary, definitions of *commissioner* and *contact details*

This clause removes the definitions of ‘commissioner’ and ‘contact details’ from the PID Act as they are no longer required.

Clause 62 – Dictionary, definition of *discloser*

This clause amends the definition of ‘discloser’ for public interest disclosures to reflect the process that disclosers disclose disclosable conduct before an assessment as to whether the disclosure is a public interest disclosure is made by the Integrity Commissioner.

Clause 63 – Dictionary, definition of *disclosure officer*

This clause amends the definition of ‘disclosure officer’ to reflect the amendments described in clause 6 of this explanatory statement where disclosure officers will receive disclosures of disclosable conduct, rather than public interest disclosures.

Clause 64 – Dictionary, definition of *investigating entity*

This clause amends the definition of ‘investigating entity’ to point to section 18 in the PID Act, rather than listing the investigating entities in the dictionary.

SCHEDULE 1 CONSEQUENTIAL AMENDMENTS

Part 1.1 – *Freedom of Information Act 2016*

This part inserts a new section 1.9(2) into Schedule 1 of the *Freedom of Information Act 2016* (the FOI Act).

Schedule 1 of the FOI Act identifies information that is taken to be contrary to the public interest to disclose. Section 1.9(2) is being inserted to protect the identity of people who are witnesses for an investigation for a public interest disclosure. This reflects the extension of the protections under the PID Act to cover witnesses.

Part 1.2 – *Integrity Commission Act 2018*

This part amends a number of sections in the *Integrity Commission Act 2018*.

Section 24, new note

This clause inserts a new note into section 24, Functions of commissioner, to highlight that the Integrity Commissioner has functions under the PID Act.

Section 40

This clause substitutes section 40, Commissioner – acting appointment.

Under the existing section 40, acting arrangements for the Integrity Commissioner can only be established if the Speaker approves a leave of absence.

The proposed section 40 enables the Speaker to appoint an acting commissioner if the position is vacant or if the commissioner cannot for any reason (including a conflict of interest) exercise a function under the IC Act.

New section 59A

This clause inserts a new section 59A. This section has been inserted to address the situation where a person has disclosed information under the PID Act and the Integrity Commissioner is not satisfied that the disclosure is about disclosable conduct but suspects on reasonable grounds that the conduct in the disclosure is corrupt conduct.

In this situation, the disclosure is automatically taken to be a corruption complaint under the IC Act and the discloser is not required to make a separate complaint to the Integrity Commissioner.

New section 218(1)(ca)

This clause inserts a new section 218(1)(ca). This section requires the Integrity Commissioner to report on the number of disclosures under the PID Act that are taken to be corruption complaints in the Commissioner's annual report.

Section 246

This clause substitutes section 246 and is similar to the amendment to section 40 of the IC Act.

Under the existing section 246, acting arrangements for the Inspector of the Integrity Commission can only be established if the Speaker approves a leave of absence.

The proposed section 246 enables the Speaker to appoint an acting commissioner if the position is vacant or if the Inspector cannot for any reason (including a conflict of interest) exercise a function under the IC Act.

Section 286(4) and example

This clause substitutes section 286(4) to reflect the amendments to section 40 of the IC Act as identified above. The example, which related to the application of section 40(1), has been removed as it is no longer relevant.

New section 289(3) and (4)

This clause inserts a new section 289(3) and (4). This amendment is consequential to the insertion of section 59A into the IC Act as described above.

Under the existing section 289 of the IC Act, a complainant does not have a defence of absolute privilege for publishing information in a corruption complain if the complainant publishes the information before it is published under the IC Act by the Integrity Commissioner or the Inspector of the Integrity Commission.

Where a discloser discloses conduct under the PID Act, this is taken as 'publishing' information. This means that if the Integrity Commissioner is not satisfied that the disclosure is about disclosable conduct but suspects on reasonable grounds that the conduct in the disclosure is corrupt conduct the discloser will not have protection from defamation action under the PID Act.

Section 289(3) and (4) has the effect that, in the situation described above, the disclosure of conduct under the PID Act, before it is considered to be a corruption complaint, is not taken to be publishing the information for the purposes section 289 of the IC Act.

Part 1.3 – Ombudsman Act 1989

This part amends section 5(3)(b)(ii) of the *Ombudsman Act 1989* to update a cross reference which has been affected by the amendments made to section 34, Role of ombudsman, as described in clause 44 of this explanatory statement.

Part 1.4 – Public Sector Management Act 1994

This part removes the note from section 143 of the *Public Sector Management Act 1994* (the PSM Act).

The note refers to functions of the Public Sector Standards Commissioner under other legislation and uses the functions under the PID Act as an example. With the functions set out in section 28 of the PID Act moving to the Integrity Commissioner (as described in clause 28 of this explanatory statement) the note in the PSM Act is no longer correct.