



Whistleblowers Protection Act 1994

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This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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Queensland

Whistleblowers Protection Act 1994

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Whistleblowers Protection Act 1994

[as amended by all amendments that commenced on or before 1 July 2005]

An Act to protect whistleblowers and for other purposes

Part 1 Preliminary

Division 1 Title and commencement

1 Short title

This Act may be cited as the *Whistleblowers Protection Act 1994*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Division 2 Object of Act

3 Principal object of Act

This Act's principal object is to promote the public interest by protecting persons who disclose—

- unlawful, negligent or improper conduct affecting the public sector
- danger to public health or safety
- danger to the environment.

Division 3 Definitions

4 Definitions and dictionary

- (1) The dictionary in schedule 6 defines particular words used in this Act.
- (2) Schedule 5 contains certain definitions in separate sections.
- (3) Schedule 5 definitions and definitions found elsewhere in this Act are signposted in the dictionary.

Division 4 Operation of Act

5 Act generally binding

This Act binds all persons, including the State.

6 Other protection saved

This Act does not limit the protection given by another law to a person who makes disclosures of any type or affect another remedy available to the person.

Part 2 General explanation of Act

7 What is the general nature of the Act's scheme?

- (1) This Act provides a scheme that, in the public interest, gives special protection to disclosures about unlawful, negligent or improper public sector conduct or danger to public health or safety or the environment.
- (2) Because the protection is very broad, the scheme has a number of balancing mechanisms intended to—
 - (a) focus the protection where it is needed; and
 - (b) make it easier to decide whether the special protection applies to a disclosure; and

- (c) ensure appropriate consideration is also given to the interests of persons against whom disclosures are made; and
 - (d) encourage the making of disclosures in a way that helps to remedy the matter disclosed; and
 - (e) prevent the scheme adversely affecting the independence of the judiciary and the commercial operations of GOCs or corporatised corporations.
- (3) The scheme gives protection only to a ***public interest disclosure***,¹ which is a particular type of disclosure defined by reference to the person who makes the disclosure, the type of information disclosed and the entity to which the disclosure is made (the ***appropriate entity***).
- (4) Certain types of public interest disclosures may be disclosed under the scheme by a ***public officer***, which includes any officer of a ***public sector entity***.
- (5) The expression ***public sector entity*** is widely defined and a list can be found in schedule 5, section 2.
- (6) Other types of public interest disclosures may be made under the scheme by anybody.

8 Public disclosures made by public officers (pt 3)

- (1) Under section 15, a public officer may disclose ***official misconduct***, an expression defined in the *Crime and Misconduct Act 2001*.
- (2) Under section 16, a public officer may disclose ***maladministration*** that specifically, substantially and adversely affects someone's interests.
- (3) Maladministration is widely defined to cover illegal, arbitrary, oppressive or improper public sector ***administrative action***.
- (4) Under section 17, a public officer may disclose negligent or improper management involving a substantial waste of ***public funds***.

1 Each expression in this part that is in bold type and italics is defined either in the dictionary or in a section signposted by the dictionary.

- (5) The disclosure may concern the conduct of any public officer or public sector entity or anyone contracting to supply goods or services (other than as an employee) to a public sector entity.
- (6) Under section 18, a public officer may disclose a substantial and specific danger to **public health or safety** or the **environment**.
- (7) Public health or safety is widely defined in this Act and the wide definition of environment in the *Environmental Protection Act 1994* is introduced by cross reference.

9 Public interest disclosures made by anybody

- (1) Under section 19, anybody may disclose a substantial and specific danger to the health or safety of a person with a **disability**.
- (2) The wide definition of disability in the *Disability Services Act 1992* is introduced by cross reference.
- (3) Under section 19, anybody may disclose a substantial and specific danger to the environment from contraventions of, or of conditions under, provisions of Acts listed in schedule 2.
- (4) Under section 20, anybody may disclose a **reprisal** taken against anybody for making a public interest disclosure.

10 How must a public interest disclosure be made (pt 4)?

- (1) Under part 4, division 2, a public interest disclosure must be made to an appropriate entity, which is a **public sector entity** identified under the division.
- (2) This requirement ensures that—
 - (a) public interest disclosures are made to public sector entities that have responsibility or power to take appropriate action about the information disclosed or to provide an appropriate remedy; and
 - (b) unfair damage is not caused to the reputations of persons against whom disclosures are made by inappropriate publication of unsubstantiated disclosures.

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- (3) Under the division, a public interest disclosure may be made to an appropriate unit—
 - (a) in any way, unless certain exceptions apply including, for example, another law requiring a particular procedure or the appropriate entity having established reasonable procedures; and
 - (b) despite any exception otherwise applying, always to specified persons within the appropriate entity, including the appropriate entity's *chief executive officer*.
- (4) Under part 4, division 3—
 - (a) public sector entities receiving public interest disclosures are required to keep proper records about them, because of the special protection given for public interest disclosures; and
 - (b) certain information about public interest disclosures is required to be provided annually to the Legislative Assembly; and
 - (c) reasonable information about action taken on a public interest disclosure made or referred to an appropriate entity, and the results, is required to be given to the discloser or referrer.
- (5) Part 4, division 4 provides for the application of the Act to courts, tribunals and judicial officers in a way intended to prevent the Act's administration adversely affecting judicial work or independence.
- (6) Part 4, division 5 provides for the application of the Act to GOCs in a way intended to prevent the Act's administration adversely affecting GOCs commercial operations.
- (7) Part 4, division 6 provides for the application of the Act to corporatised corporations in a way intended to prevent the Act's administration adversely affecting corporatised corporation's commercial operations.

11 What is the special protection given for public interest disclosures (pt 5)?

- (1) Under part 5, division 2, a person is declared not to be liable, civilly, criminally or under an administrative process, for making a public interest disclosure.
- (2) Under part 5, divisions 3 to 5, causing or attempting or conspiring to cause *detriment* to any person because of a public interest disclosure is declared to be a *reprisal* and unlawful, both under the civil law of tort and the criminal law.
- (3) Under part 5, division 6—
 - (a) public sector entities must establish reasonable procedures to protect their officers from reprisals; and
 - (b) public officers with existing rights to appeal against, or to apply for a review of, disciplinary action, appointments, transfers or unfair treatment are permitted to use these rights against reprisals; and
 - (c) public service employees are given an additional right to appeal to the public service commissioner to be relocated to remove the danger of reprisals.
- (4) Under part 5, division 7, the Industrial Commission, or, if the Industrial Commission does not have jurisdiction, the Supreme Court, may grant injunctions against reprisals.

12 General sections (pt 6)

- (1) Part 6 provides for certain offences and the criminal proceedings about the offences.
- (2) The part makes it an offence—
 - (a) for a public officer to record or disclose certain confidential information gained through involvement in this Act's administration other than under certain circumstances including, for example, the investigation under an Act of information disclosed under a public interest disclosure; and
 - (b) for a person intentionally to give false or misleading information as a public interest disclosure or in subsequent inquiries into the person's disclosure.

- (3) The part also declares that a public officer who commits one of these offences or the offence of reprisal is guilty of misconduct under any Act under which the officer may be dismissed or disciplined for misconduct.

Part 3 Disclosures that may be made

13 Purpose of part

The purpose of this part is to describe the type of disclosures that may be made as public interest disclosures under this Act and who may make them.

14 What type of information can be disclosed?

- (1) The types of information that may be disclosed by a public interest disclosure, and who may make the disclosure, are specified in sections 15 to 20.
- (2) A person has information about conduct or danger specified in sections 15 to 20 if the person honestly believes on reasonable grounds that the person has information that tends to show the conduct or danger.
- (3) If information is about an event, it may be about something that has or may have happened, is or may be happening, or will or may happen.
- (4) If the information is about someone else's conduct, the information may be about conduct in which the other person has or may have engaged, is or may be engaging, or is or may be intending to engage.
- (5) The information need not be in a form that would make it admissible evidence in a court proceeding.

Example—

The information may take the form of hearsay.

15 Public officer may disclose official misconduct

A public officer² may make a public interest disclosure about someone else's conduct if—

- (a) the officer has information about the conduct; and
- (b) the conduct is official misconduct.

16 Public officer may disclose maladministration

A public officer may make a public interest disclosure about someone else's conduct if—

- (a) the officer has information about the conduct; and
- (b) the conduct is maladministration that adversely affects anybody's interests in a substantial and specific way.

17 Public officer may disclose negligent or improper management affecting public funds

(1) A public officer may make a public interest disclosure about the conduct of another public officer, a public sector entity or a public sector contractor if—

- (a) the officer has information about the conduct; and
- (b) the conduct is negligent or improper management directly or indirectly resulting, or likely to result, in a substantial waste of public funds.

(2) The disclosure cannot be based on a mere disagreement over policy that may properly be adopted about amounts, purposes and priorities of expenditure.

18 Public officer may disclose danger to public health or safety or environment

(1) This section applies if a public officer has information about a substantial and specific danger to public health or safety or to the environment.

² This and other sections allowing a person to make public interest disclosures as a public officer do not generally contain rules limiting the disclosures to disclosures about the public sector unit of which the person is an officer.

- (2) The public officer may make a public interest disclosure of the information.

19 Anybody may disclose danger to person with disability or to environment from particular contraventions

- (1) This section applies if anybody has information about—
- (a) a substantial and specific danger to the health or safety of a person with a disability; or
 - (b) the commission of an offence against a provision mentioned in schedule 2, if commission of the offence is or would be a substantial and specific danger to the environment; or
 - (c) a contravention of a condition imposed under a provision mentioned in schedule 2, if the contravention is or would be a substantial and specific danger to the environment.
- (2) The person may make a public interest disclosure of the information.

20 Anybody may disclose reprisal

Anybody may make a public interest disclosure about someone else's conduct if—

- (a) the person has information about the conduct; and
- (b) the conduct is a reprisal.

21 Conduct of unknown person

A person may make a public interest disclosure whether or not the person is able to identify a particular person to which the information disclosed relates.

22 Involuntary disclosures

A disclosure may be a public interest disclosure even though it is made under a legal requirement.

23 Disclosure of events that happened before commencement

A public interest disclosure may be made under this Act about events that happened or may have happened before the commencement of this Act.

Part 4 Disclosure process**Division 1 Purpose of part****24 Purpose of part**

The purpose of this part is to describe the ways in which a person may make a public interest disclosure and provide for related processes.

Division 2 Disclosure must be to appropriate entity**25 Disclosure must be made to an appropriate entity**

- (1) Section 26 specifies appropriate entities to which public interest disclosures may be made.³
- (2) Section 27 provides more detail on how and to whom the public interest disclosure may be made within the appropriate entities.
- (3) To be treated as a public interest disclosure, a disclosure under sections 15 to 20 must be made to an appropriate entity.
- (4) The fact that a public interest disclosure may be made under a particular provision to a particular appropriate entity does not

³ See division 4 for overriding limitations about courts, tribunals and judicial officers and division 5 for overriding limitations about statutory GOCs.

exclude it from being made under another provision to the same or another appropriate entity.

26 Every public sector entity is an appropriate entity for certain things

- (1) Any public sector entity is an appropriate entity to receive a public interest disclosure—
 - (a) about its own conduct or the conduct of any of its officers; or
 - (b) made to it about anything it has a power to investigate or remedy; or
 - (c) made to it by anybody who is entitled to make the public interest disclosure and honestly believes it is an appropriate entity to receive the disclosure under paragraph (a) or (b); or
 - (d) referred to it by another public sector entity under section 28.⁴
- (2) Subsection (1)(c) does not permit a public sector entity to receive a public interest disclosure if, apart from this section, it would not be able to receive the disclosure because of division 4, 5 or 6.⁵
- (3) If a person makes a public interest disclosure to an appropriate entity, the person may also make a public interest disclosure to the entity about a reprisal taken against the person for making the disclosure.

Examples—

Schedule 3 has examples of the operation of subsection (1)(a) and (b).

27 How to disclose to appropriate entity

- (1) A public interest disclosure may be made to an appropriate entity in any way, including anonymously.

⁴ Section 28 (Disclosure may be referred to an appropriate entity)

⁵ Division 4 (Limitation on disclosure process for courts, tribunals and judicial officers), 5 (Limitation on disclosure process for GOCs) or 6 (Limitation on disclosure process for corporatised corporations)

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- (2) However, if an appropriate entity establishes a reasonable procedure for making a public interest disclosure to the entity, the procedure must be used by a person making a public interest disclosure to the entity.
- (3) Despite subsection (2), a public interest disclosure made to an appropriate entity may always be made to—
- (a) its chief executive officer;⁶ or
 - (b) if the appropriate entity has a governing body—a member of its governing body; or
 - (c) if an officer of the entity is making the disclosure—a person who, directly or indirectly, supervises or manages the officer; or
 - (d) an officer of the entity who has the task of receiving or taking action on the type of information being disclosed.
- (4) This Act does not affect a procedure required under another Act for disclosing the type of information being disclosed.
- (5) If a public interest disclosure is properly made to an appropriate entity, the entity is taken to have received the disclosure for the purpose of this Act.
- (6) However, subsection (5) is subject to divisions 4 to 6.⁷

Examples of subsection (3)(d)—

- 1 The entity's internal auditor, if the public interest disclosure is made under section 17.⁸
- 2 A health officer or environmental officer of the department having a statutory or administrative responsibility to investigate something mentioned in a disclosure under section 18(1) or 19(1).⁹
- 3 The officer of the entity in charge of its human resource management if the public interest disclosure is made under section

⁶ See schedule 5, section 1 for the definition of *chief executive officer*.

⁷ Divisions 4 (Limitation on disclosure process for courts, tribunals and judicial officers), 5 (Limitation on disclosure process for GOCs) and 6 (Limitation on disclosure process for corporatised corporations)

⁸ Section 17 (Public officer may disclose negligent or improper management affecting public funds)

⁹ Section 18 (Public officer may disclose danger to public health or safety or environment) or 19 (Anybody may disclose danger to person with disability or to environment from particular contraventions)

20¹⁰ and is about detriment to the career of an employee of the entity.

28 Disclosure may be referred to an appropriate entity

- (1) If a public interest disclosure received by an appropriate entity is about—
 - (a) the conduct of another public sector entity or the actions of an officer of another public sector entity; or
 - (b) the conduct of anybody, including itself, or anything that another public sector entity has a power to investigate or remedy;

the entity may refer the public interest disclosure to the other public sector entity.

- (2) If the entity refers the disclosure to another public sector entity, its power to investigate or remedy is unaffected by the reference.
- (3) An appropriate entity must not refer a public interest disclosure to another public sector entity unless it first considers whether there is an unacceptable risk that a reprisal would be taken against any person because of the reference.
- (4) In considering whether there would be an unacceptable risk, an appropriate entity must, if practicable, consult with the person who made the public interest disclosure.
- (5) An appropriate entity must not refer a public interest disclosure to another public sector entity if it considers there is an unacceptable risk.
- (6) This section does not affect another law under which the entity must refer a report, complaint, information or evidence to another entity.

10 Section 20 (Anybody may disclose reprisal)

Division 3 Records and reports about disclosures

29 Records must be kept of disclosures

(1) In this section—

disclosure means a public interest disclosure or purported public interest disclosure.

public sector entity does not include—

- (a) the Executive Council; or
- (b) a court or tribunal.

(2) The objectives of this section are to—

- (a) ensure that disclosures are sufficiently identifiable to allow part 5¹¹ to be easily applied; and
- (b) assist in the preparation of accurate reports to the Legislative Assembly under sections 30 and 31.

(3) The chief executive officer of a public sector entity must ensure that a proper record is kept about disclosures received by the public sector entity, including—

- (a) the name of the person making the disclosure, if known; and
- (b) the information disclosed; and
- (c) any action taken on the disclosures.

30 Units must report to Legislative Assembly on disclosures

(1) In this section—

disclosure means a public interest disclosure or a purported public interest disclosure.

public sector entity does not include—

- (a) the Executive Council; or
- (b) a court or tribunal; or

11 Part 5 (Privilege, protection and compensation)

- (c) a GOC; or
- (d) a corporatised corporation.

report period of an annual report means the period covered by the report.

substantially verified disclosure includes a disclosure for which an offence prosecution or disciplinary action has been taken or recommended.

- (2) A public sector entity or an officer of a public sector entity required under an Act to prepare an annual report of the entity's activities during a report period for tabling in the Legislative Assembly must include statistical information about—
 - (a) the number of disclosures received by it over the report period, for each type of information disclosed; and
 - (b) the number of disclosures substantially verified over the report period, even if received before the period, for each type of information verified.

31 Minister must report to Legislative Assembly on Act's administration

- (1) In this section—

public sector entity does not include—

 - (a) the Executive Council; or
 - (b) a court or tribunal; or
 - (c) a GOC; or
 - (d) a corporatised corporation.
- (2) The Minister must prepare for each financial year an annual report to the Legislative Assembly on the administration of this Act.
- (3) If asked by the chief executive of the department in which this Act is administered, a public sector entity must provide reasonable assistance to the chief executive to enable the department to compile information and statistics for inclusion in the annual report.
- (4) The report may be included in the department's annual report.

32 Reasonable information about result of disclosure must be given to discloser or referring agency

- (1) If asked by a person who makes a public interest disclosure or by a public sector entity that has referred a public interest disclosure to it, an appropriate entity must give the person or the referring entity reasonable information about action taken on the disclosure and the results.
- (2) If the request is for written information, the information must be written.
- (3) Information need not be given under subsection (1) to a person who makes a public interest disclosure, if—
 - (a) giving the information would be impractical in the circumstances; or
 - (b) the information requested has already been given to the person; or
 - (c) the request is vexatious.
- (4) Information must not be given under subsection (1), if giving the information would be likely to adversely affect—
 - (a) anybody's safety; or
 - (b) the investigation of an offence or possible offence; or
 - (c) necessary confidentiality about an informant's existence or identity.
- (5) If the public interest disclosure is made to the Crime and Misconduct Commission in a complaint of misconduct or official misconduct, this section does not impose on the commission any duty that the commission does not already have under that Act.

Division 4 Limitation on disclosure process for courts, tribunals and judicial officers

33 Object of division

- (1) This division deals with some issues about the treatment of courts and tribunals as public sector entities and judicial officers as public officers under this Act.
- (2) The purpose of the division is to clarify the application of this Act and to ensure this Act's administration does not detrimentally affect judicial work or independence.
- (3) Section 34 deals with public interest disclosures made administratively about judicial officers.
- (4) Section 35 deals with public interest disclosures made in proceedings before courts or tribunals.

34 Disclosures made administratively to or about a judicial officer

- (1) This section applies to public interest disclosures made administratively about judicial officers.
- (2) A person may make a public interest disclosure about the conduct of a judicial officer only under this section, despite any other provision of this Act.
- (3) A public interest disclosure under section 15¹² about the conduct of a judicial officer may be made only—
 - (a) to the chief judicial officer of the relevant court or tribunal; or
 - (b) to the Crime and Misconduct Commission.

12 Section 15 (Public officer may disclose official misconduct)

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- (4) A public interest disclosure under section 16, 17, 18 or 19¹³ about the conduct of a judicial officer may be made only to the chief judicial officer of the relevant court or tribunal.
- (5) If a reprisal that is conduct of a judicial officer is taken against a person for making a public interest disclosure under this section, the person may make a public interest disclosure about the reprisal only to—
 - (a) the chief judicial officer of the relevant court or tribunal; or
 - (b) if the reprisal is official misconduct—the chief judicial officer of the relevant court or tribunal or the Crime and Misconduct Commission.
- (6) A chief judicial officer may receive a public interest disclosure only if the disclosure is about the conduct of another judicial officer.
- (7) Under section 28,¹⁴ the chief judicial officer may refer a public interest disclosure made to the chief judicial officer about the conduct of another judicial officer to an appropriate entity.

35 Disclosures in court or tribunal proceedings

- (1) The purpose of this section is to declare how this Act applies to disclosures made to a court or tribunal in a proceeding.
- (2) This section applies if a person—
 - (a) has information that the person may disclose as a public interest disclosure to an appropriate entity; and
 - (b) discloses the information to a court or tribunal in a proceeding in which the information is relevant and admissible.

13 Section 16 (Public officer may disclose maladministration), 17 (Public officer may disclose negligent or improper management affecting public funds), 18 (Public officer may disclose danger to public health or safety or environment) or 19 (Anybody may disclose danger to person with disability or to environment from particular contraventions)

14 Section 28 (Disclosure may be referred to an appropriate entity)

- (3) The disclosure is a public interest disclosure made to the court or tribunal as an appropriate entity under section 26(1)(b).¹⁵
- (4) The court or tribunal may refer the disclosure to another appropriate entity under section 28.
- (5) The fact that a court or tribunal is treated as a public sector entity under this Act, and therefore can be an appropriate entity under section 26(1)(b) to receive a public interest disclosure, does not give a person a right to take a proceeding before the court or tribunal that the person does not have apart from this Act.

Division 5 Limitation on disclosure process for GOCs

36 Object of division

- (1) This division deals with some issues about the treatment of GOCs as public sector entities and their officers as public officers under this Act.
- (2) The purpose of the division is to clarify the application of this Act and to ensure this Act's administration does not detrimentally affect the commercial operation of GOCs.

37 Application of Act to GOCs

- (1) An officer of a statutory GOC may, under section 15, 16 or 18,¹⁶ make a public interest disclosure to the statutory GOC about its conduct or the conduct of another officer of the statutory GOC.
- (2) An officer of a statutory GOC may, under section 15, make a public interest disclosure to the Crime and Misconduct Commission about the conduct of the statutory GOC or the conduct of another officer of the statutory GOC.

15 Section 26 (Every public sector entity is an appropriate entity for certain things)

16 Section 15 (Public officer may disclose official misconduct), 16 (Public officer may disclose maladministration) or 18 (Public officer may disclose danger to public health or safety or environment)

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- (3) An officer of a statutory GOC may, under section 17,¹⁷ make a public interest disclosure to the statutory GOC about its conduct, the conduct of another officer of the statutory GOC or the conduct of a public sector contractor contracting with the statutory GOC.
- (4) An officer of a statutory GOC may also make a public interest disclosure about a reprisal taken against the officer for making the public interest disclosure under subsection (1) or (3)—
 - (a) under section 26(3),¹⁸ to the statutory GOC; or
 - (b) if the reprisal is official misconduct—to the Crime and Misconduct Commission.
- (5) For the purpose of public interest disclosures under subsections (1) to (4) and of applying any law about the disclosures—
 - (a) the statutory GOC is a public sector entity; and
 - (b) the officer making the public interest disclosure is a public officer; and
 - (c) if the public interest disclosure is made under section 17 about the conduct of another officer of the statutory GOC—the other officer is a public officer.
- (6) Other than as provided by subsection (5)—
 - (a) a GOC is not a public sector entity under this Act; and
 - (b) an officer of a GOC is not a public officer under this Act; and
 - (c) an officer of a GOC cannot, as a public officer, make a public interest disclosure.
- (7) This section does not affect the making of a public interest disclosure by anybody under section 19 or 20.¹⁹
- (8) This section does not affect the reference under section 28²⁰—

17 Section 17 (Public officer may disclose negligent or improper management affecting public funds)

18 Section 26 (Every public sector entity is an appropriate entity for certain things)

19 Section 19 (Anybody may disclose danger to person with disability or to environment from particular contraventions) or 20 (Anybody may disclose reprisal)

20 Section 28 (Disclosure may be referred to an appropriate entity)

- (a) from a statutory GOC to another public sector entity of a public interest disclosure made to the statutory GOC in accordance with this section; or
- (b) from a public sector entity to a statutory GOC of a public interest disclosure made to the public sector entity.

Division 6 Limitation on disclosure process for corporatised corporations

37A Object of division

- (1) This division deals with some issues about the treatment of corporatised corporations as public sector entities and their officers as public officers under this Act.
- (2) The purpose of the division is to clarify the application of this Act and to ensure this Act's administration does not detrimentally affect the commercial operation of corporatised corporations.

37B Application of Act to corporatised corporations

- (1) An officer of a corporatised corporation may, under section 15, 16 or 18,²¹ make a public interest disclosure to the corporatised corporation about its conduct or the conduct of another officer of the corporatised corporation.
- (2) An officer of a corporatised corporation may, under section 15, make a public interest disclosure to the Crime and Misconduct Commission about the conduct of the corporatised corporation or the conduct of another officer of the corporatised corporation.
- (3) An officer of a corporatised corporation may, under section 17,²² make a public interest disclosure to the corporatised

21 Section 15 (Public officer may disclose official misconduct), 16 (Public officer may disclose maladministration) or 18 (Public officer may disclose danger to public health or safety or environment)

22 Section 17 (Public officer may disclose negligent or improper management affecting public funds)

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corporation about its conduct, the conduct of another officer of the corporatised corporation or the conduct of a public sector contractor contracting with the corporatised corporation.

- (4) An officer of a corporatised corporation may also make a public interest disclosure about a reprisal taken against the officer for making the public interest disclosure under subsection (1) or (3)—
- (a) under section 26(3),²³ to the corporatised corporation; or
 - (b) if the reprisal is official misconduct—to the Crime and Misconduct Commission.
- (5) For public interest disclosures under subsections (1) to (4) and of applying any law about the disclosures—
- (a) the corporatised corporation is a public sector entity; and
 - (b) the officer making the public interest disclosure is a public officer; and
 - (c) if the public interest disclosure is made under section 17 about the conduct of another officer of the corporatised corporation—the other officer is a public officer.
- (6) Other than as provided by subsection (5)—
- (a) a corporatised corporation is not a public sector entity under this Act; and
 - (b) an officer of a corporatised corporation is not a public officer under this Act; and
 - (c) an officer of a corporatised corporation cannot, as a public officer, make a public interest disclosure.
- (7) This section does not affect the making of a public interest disclosure by anybody under section 19 or 20.²⁴
- (8) This section does not affect the reference under section 28²⁵—

23 Section 26 (Every public sector entity is an appropriate entity for certain things)

24 Section 19 (Anybody may disclose danger to person with disability or to environment from particular contraventions) or 20 (Anybody may disclose reprisal)

25 Section 28 (Disclosure may be referred to an appropriate entity)

- (a) from a corporatised corporation to another public sector entity of a public interest disclosure made to the corporatised corporation under this section; or
- (b) from a public sector entity to a corporatised corporation of a public interest disclosure made to the public sector entity.

Part 5 Privilege, protection and compensation

Division 1 Purpose of part

38 Purpose of part

The purpose of this part is to describe the legal privilege, protection and rights of compensation given to a person who makes a public interest disclosure.

Division 2 Limitation of action

39 General limitation

- (1) A person is not liable, civilly, criminally or under an administrative process, for making a public interest disclosure.
- (2) Without limiting subsection (1)—
 - (a) in a proceeding for defamation the person has a defence of absolute privilege for publishing the disclosed information; and
 - (b) if the person would otherwise be required to maintain confidentiality about the disclosed information under an Act, oath, rule of law or practice—the person—
 - (i) does not contravene the Act, oath, rule of law or practice for making the disclosure; and

- (ii) is not liable to disciplinary action for making the disclosure.

40 Liability of discloser unaffected

A person's liability for the person's own conduct is not affected only because the person discloses it in a public interest disclosure.

Division 3 Reprisal unlawful

41 Reprisal and grounds for reprisal

- (1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, anybody has made, or may make, a public interest disclosure.
- (2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.
- (3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.
- (4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.
- (5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

Division 4 Criminal prosecution about reprisal

42 Reprisal is an indictable offence

- (1) A public officer who takes a reprisal commits an offence.
Maximum penalty—167 penalty units or 2 years imprisonment
- (2) The offence is an indictable offence.

- (3) If a public officer commits the offence, the Criminal Code, sections 7 and 8²⁶ apply even though a person other than a public officer may also be taken to have committed the offence because of the application.

Division 5 Civil claims about reprisal

43 Damages entitlement for reprisal

- (1) A reprisal is a tort and a person who takes a reprisal is liable in damages to anyone who suffers detriment as a result.
- (2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.
- (3) If the claim for the damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.

Division 6 Administrative action about reprisal

44 Public sector entity must protect its officers against reprisals

A public sector entity must establish reasonable procedures to protect its officers from reprisals that are, or may be, taken against them by the entity or other officers of the entity.

45 Appeal against action affected by reprisal

- (1) This section applies to a public officer who, under an Act, may appeal against, or apply for a review of, any of the following actions—
- (a) disciplinary action taken against the officer;
- (b) the appointment or transfer of the officer or another public officer to a position as a public officer;

26 Criminal Code, sections 7 (Principal offenders) and 8 (Offences committed in prosecution of common purpose)

- (c) unfair treatment of the officer.
- (2) Whether or not the Act specifies grounds for the appeal or application, the officer may also appeal or apply to have the action set aside because it was the taking of a reprisal against the officer.
- (3) Subsection (2) applies even if the decision on the hearing of the appeal or application is in the form of a recommendation.

46 Relocation of public service employees

- (1) This section—
 - (a) must be read with the *Public Service Act 1996*; and
 - (b) gives a right to appeal for the relocation of a public service employee.
- (2) The appeal must be made on the ground that—
 - (a) it is likely a reprisal will be taken against the public service employee if the employee continues in the employee's existing work location; and
 - (b) the only practical way to remove or substantially remove the danger is to relocate the employee.
- (3) The appeal may be made to the public service commissioner by the public service employee or for the employee by the chief executive of the employee's department.
- (4) If the public service commissioner considers the ground is established, the commissioner may direct that the employee be relocated within the employee's department or another department.
- (5) The public service commissioner can not direct that the employee be relocated without the agreement of—
 - (a) the public service employee; and
 - (b) if the relocation is to another department—the other department's chief executive.
- (6) For subsection (5), the public service commissioner has power to do, or authorise the doing of anything necessary or convenient to relocate the public service employee.

Division 7 Injunctions about reprisal

47 Right to apply for Industrial Commission injunction

- (1) An application for an injunction about a reprisal may be made to the Industrial Commission if the reprisal—
 - (a) has caused or may cause detriment to an employee within the meaning of the *Industrial Relations Act 1999*, section 5;²⁷ and
 - (b) involves or may involve a breach of the *Industrial Relations Act 1999*, section 5, or an award, industrial agreement, certified agreement or enterprise flexibility agreement under that Act.
- (2) The application may be made by—
 - (a) the employee; or
 - (b) an industrial organisation—
 - (i) whose rules entitle it to represent the industrial interests of the employee; and
 - (ii) acting in the employee's interests with the employee's consent; or
 - (c) the Crime and Misconduct Commission acting in the employee's interests with the employee's consent if—
 - (i) the employee is a public officer; and
 - (ii) the reprisal involves or may involve an act or omission that the Crime and Misconduct Commission may investigate.
- (3) The *Industrial Relations Act 1999*, section 5 applies to the application, but this division prevails if it is inconsistent with that section.
- (4) If the Industrial Commission has jurisdiction to grant an injunction on an application under subsection (1), the jurisdiction is exclusive of the jurisdiction of any other court or tribunal other than the Industrial Court.

²⁷ *Industrial Relations Act 1999*, section 5 (Who is an employee)

- (5) Without limiting this section, the application is an industrial cause within the meaning of the *Industrial Relations Act 1999*, section 5.

48 Right to apply for Supreme Court injunction

- (1) This section applies only to a person who cannot apply to the Industrial Commission for an injunction about a reprisal under section 47.
- (2) An application for an injunction about a reprisal may be made to the Supreme Court by—
- (a) a person claiming that the person is suffering or may suffer detriment from a reprisal; or
 - (b) the Crime and Misconduct Commission acting in the person's interests with the person's consent if—
 - (i) the employee is a public officer; and
 - (ii) the reprisal involves or may involve an act or omission that the Crime and Misconduct Commission may investigate.

49 Grounds for injunction

The Industrial Commission or Supreme Court may grant an injunction, in terms it considers appropriate, if it is satisfied that a person has engaged, is engaging or is proposing to engage, in conduct (the *reprisal conduct*) amounting to—

- (a) the taking of a reprisal; or
- (b) aiding, abetting, counselling or procuring a person to take a reprisal; or
- (c) inducing or attempting to induce, whether by threats, promises or otherwise, a person to take a reprisal; or
- (d) being in any way, directly or indirectly, knowingly concerned in, or party to, the taking of a reprisal.

50 Order may require specified action

If the Industrial Commission or Supreme Court is satisfied that a person has engaged or is engaging in reprisal conduct, it may grant an injunction requiring the person to take specified action to remedy any detriment caused by the conduct.

51 Evidence

- (1) The Industrial Commission or Supreme Court may grant an injunction restraining a person from engaging in reprisal conduct—
 - (a) whether or not it considers that the person intends to engage again, or to continue to engage, in the conduct; or
 - (b) whether or not the person has previously engaged in the conduct; or
 - (c) whether or not there is an imminent danger of substantial damage to anyone if the person engages in the conduct.
- (2) The Industrial Commission or Supreme Court may grant an injunction requiring a person to do something—
 - (a) whether or not it considers that the person intends to fail again, or to continue to fail, to do the thing; or
 - (b) whether or not the person has previously failed to do the thing; or
 - (c) whether or not there is an imminent danger of substantial damage to anybody if the person fails to do the thing.

52 Interim injunction

An interim injunction may be granted pending the final decision on the application.

53 Confidentiality of applications

- (1) For an application before it, the Industrial Commission or Supreme Court may direct that—

- (a) a report of the whole or part of the proceeding for the application must not be published; or
 - (b) evidence given, or anything filed, tendered or exhibited in the application must be withheld from release or search, or released or searched only on a specified condition.
- (2) The direction may be given if the Industrial Commission or Supreme Court considers that—
- (a) disclosure of the report, evidence or thing would not be in the public interest; or
 - (b) persons other than parties to the application do not have a sufficient legitimate interest in being informed of the report, evidence or thing.
- (3) An application for an injunction may be heard in chambers.
- (4) An application for an injunction may be heard *ex parte* if the Industrial Commission or Supreme Court considers an *ex parte* hearing is necessary in the circumstances.
- (5) This section does not limit the power of the Industrial Commission or Supreme Court.

54 Undertakings as to damages and costs

If the Crime and Misconduct Commission applies for an injunction, no undertaking about damages or costs is to be required.

Part 6 General

55 Preservation of confidentiality

- (1) If a person gains confidential information because of the person's involvement as a public officer in this Act's administration, the person must not make a record of the information, or intentionally or recklessly disclose the information to anyone, other than under subsection (3).

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Maximum penalty—84 penalty units.

- (2) A public officer gains information through involvement in the administration of this Act if the officer gains the information because of being involved, or an opportunity given by being involved, in the administration.

Example—

If a public officer gains information because the public officer receives a public interest disclosure for an appropriate entity, the public officer gains the information through involvement in the administration of this Act.

- (3) A person may make a record of confidential information, or disclose it to someone else—
- (a) for this Act; or
 - (b) to discharge a function under another Act including, for example, to investigate something disclosed by a public interest disclosure; or
 - (c) for a proceeding in a court or tribunal; or
 - (d) if authorised under a regulation or another Act.
- (4) This section does not affect an obligation a person may have under the law about natural justice to disclose information to a person whose rights would otherwise be detrimentally affected.
- (5) Subsection (4) applies to information disclosing, or likely to disclose, the identity of a person who makes a public interest disclosure only if it is—
- (a) essential to do so under the law about natural justice; and
 - (b) unlikely a reprisal will be taken against the person because of the disclosure.
- (6) To remove doubt, if there is an inconsistency between this section and section 6,²⁸ this section prevails.
- (7) In this section—
- confidential information*** includes—

28 Section 6 (Other protection saved)

- (a) information about the identity, occupation, residential or work address or whereabouts of a person—
 - (i) who makes a public interest disclosure; or
 - (ii) against whom a public interest disclosure has been made; and
- (b) information disclosed by a public interest disclosure; and
- (c) information about an individual's personal affairs; and
- (d) information that, if disclosed, may cause detriment to a person;

but does not include information publicly disclosed in a public interest disclosure made to a court, tribunal or other entity that may receive evidence under oath, unless further disclosure of the information is prohibited by law.

law for a public interest disclosure made to a committee of the Legislative Assembly, includes a standing rule, order or motion of the Legislative Assembly.

56 False or misleading information

- (1) A person commits an offence if the person—
 - (a) makes a statement to an appropriate entity intending that it be acted on as a public interest disclosure; and
 - (b) in the statement, or in the course of inquiries into the statement, intentionally gives information that is false or misleading in a material particular.

Maximum penalty—167 penalty units or 2 years imprisonment.

- (2) The offence is an indictable offence.

57 Misconduct by breach of Act

- (1) A public officer is guilty of misconduct under an Act under which the officer may be dismissed from office or disciplined for misconduct, if the officer contravenes the following—
 - section 42 (Reprisal is an indictable offence)

- section 55 (Preservation of confidentiality)
 - section 56 (False or misleading information).
- (2) To remove doubt, it is declared that under the *Crime and Misconduct Act 2001*, the Crime and Misconduct Commission may investigate the contravention, or the alleged or suspected contravention, if—
- (a) the public officer is a member of the police service; or
 - (b) the contravention is official misconduct by a person holding an appointment in a unit of public administration within the meaning of the *Crime and Misconduct Act 2001*.

58 Proceedings for offences generally

An offence against this Act other than an offence declared to be an indictable offence is a summary offence.

59 Proceedings for indictable offences

- (1) A proceeding on a charge for an indictable offence under this Act may be taken, at the election of the prosecution—
- (a) by summary proceeding under the *Justices Act 1886*; or
 - (b) on indictment.
- (2) A Magistrates Court must not hear the charge summarily if—
- (a) the defendant asks the court at the start of the hearing to treat the proceeding as a committal proceeding; or
 - (b) the court considers that the charge should be prosecuted on indictment.
- (3) A Magistrates Court may start to hear and decide the charge summarily even if more than 1 year has passed since the offence was committed.

60 Change to a committal proceeding during summary proceeding

- (1) This section applies if, during a proceeding before a Magistrates Court to hear and decide a charge for an

indictable offence summarily, the court decides the charge is not one that should be decided summarily.

- (2) The court must stop treating the proceeding as a proceeding to hear and decide the charge summarily and start treating it as a committal proceeding.
- (3) The defendant's plea at the start of the hearing must be disregarded.
- (4) The evidence already heard by the court must be taken to be evidence in the committal proceeding.
- (5) To remove doubt, it is declared that the *Justices Act 1886*, section 104²⁹ must be complied with for the committal proceeding.

61 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may provide that, for all or particular public interest disclosures—
 - (a) a public sector entity is to be treated as a part of another public sector entity; or
 - (b) a part of a public sector entity is to be treated as part of another public sector entity or a separate public sector entity; or
 - (c) public sector entities or parts of public sector entities are to be treated as a single public sector entity.
- (3) A regulation under subsection (2) may not—
 - (a) apply to a public sector entity specified in schedule 5, section 2(1)(a), (b) or (g);³⁰ or
 - (b) provide for a court or tribunal to be treated as part of a public sector entity not consisting of courts or tribunals of like jurisdiction or their administrative offices; or

²⁹ *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

³⁰ Schedule 5, section 2 (Meaning of *public sector entity*)

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- (c) be inconsistent with a requirement under an Act that a public sector entity act independently.

Schedule 1 Chief executive officers

schedule 5, section 1 of the Act

| Public sector entities | Chief executive officers |
|---|--|
| Legislative Assembly committee | Speaker or chairperson |
| Parliamentary Service | Speaker or Clerk of the Parliament |
| court or tribunal presided over by Supreme Court judge | Chief Justice |
| court or tribunal presided over by a District Court judge | Chief Judge of District Courts |
| court or tribunal presided over by a magistrate or justice of the peace | Chief Stipendiary Magistrate |
| administrative office of a court or tribunal | proper officer of the court or tribunal or chief executive of the relevant department |
| Executive Council | senior officer appointed as clerk of Executive Council |
| department | department's chief executive or Minister |
| local government | mayor or chief executive officer, including, for Brisbane City Council, the town clerk |
| statutory GOC | director or chief executive officer |
| Office of the Ombudsman | Ombudsman |

Schedule 2 Offences endangering the environment

section 19(1)(b) and (c) of the Act

Aboriginal Cultural Heritage Act 2003

- section 24(1) (Unlawful harm to Aboriginal cultural heritage)
- section 25(1) (Prohibited excavation, relocation and taking away)
- section 26(1) (Unlawful possession of Aboriginal cultural heritage)

Environmental Protection Act 1994

- All provisions for which a contravention is an offence

Fisheries Act 1994

- Section 89 (Noxious fisheries resources not to be possessed, released etc.)
- Section 90 (Nonindigenous fisheries resources not to be possessed, released etc.)
- Section 91 (Aquaculture fisheries resources not to be released)
- Section 92 (Duty of person who takes or possesses noxious or nonindigenous fisheries resources)
- Section 123 (Protection of marine plants)

Forestry Act 1959

- Section 53(1)(b) (Interference with forest products on Crown holdings and mining leases)
- Section 54 (Interfering with forest products on Crown lands etc.)

Schedule 2 (continued)**Land Act 1994**

- Section 255 (Tree clearing permit needed)
- Section 404 (No trespassing)

Mineral Resources Act 1989

- Section 194 (Conditions of mineral development licence)
- Section 209 (Contravention by holder of mineral development licence)
- Section 276 (Conditions of mining lease)

Nature Conservation Act 1992

- Section 88(1) (Restriction on taking etc. protected animals)
- Section 89(1) (Restriction on taking etc. protected plants)
- Section 91 (Prohibition on release etc. of international and prohibited wildlife)
- Section 92 (Prohibition on breeding etc. hybrids of protected animals)
- Section 93 (Aborigines' and Torres Strait Islanders' rights to take etc. protected wildlife)
- Section 94 (Conservation officers prohibited in dealing with protected wildlife)
- Section 97(2) (Restriction on taking etc. of native wildlife in areas of major interest and critical habitats)
- Section 109 (Compliance with order)

Petroleum Act 1923

- Section 147 (Penalties)

Schedule 2 (continued)**Petroleum Regulation 1966**

- Section 243 (Penalties)

Queensland Heritage Act 1992

- Section 33(1) (Development not to be carried out without council's approval)
- Section 47 (Offences)
- Section 51 (Offence to destroy protected area etc.)
- Section 59 (Contravention of stop order)
- Section 65(2) (Restoration orders)

Torres Strait Islander Cultural Heritage Act 2003

- section 24(1) (Unlawful harm to Torres Strait Islander cultural heritage)
- section 25(1) (Prohibited excavation, relocation and taking away)
- section 26(1) (Unlawful possession of Torres Strait Islander cultural heritage)

Transport Operations (Marine Pollution) Act 1995

- All provisions for which a contravention is an offence

Water Act 2000

- section 272 (Immediate suspension of permit in exceptional circumstances)
- section 273 (Notice to owner of land to remove vegetation etc.)
- section 814 (Offence to destroy vegetation, excavate or place fill without permit)

Schedule 3 Examples of appropriate entities in particular circumstances

section 26 of the Act

Examples, under section 26(1)(a) of the Act, of public interest disclosures made to appropriate entities because the disclosure is about the conduct of the entities or of their officers—

- 1 W, an employee of a department, has information that officers of a disability service run by the department have been committing serious abuses against clients. The conduct is of a type mentioned in section 19(1)(a) of the Act.³¹ W discloses the conduct to the department. The department is an appropriate entity to receive the disclosure because it is about the conduct of its staff.
- 2 W, an employee of a local government, has information about the local government's conduct in using negligent management practices resulting in substantial loss of public funds. The conduct is of a type mentioned in section 17 of the Act.³² W discloses the conduct to the local government. The local government is an appropriate entity to receive the disclosure because it is about its own conduct.
- 3 W, a corrective services officer employed by the chief executive (corrective services), has information that another corrective services officer has committed a criminal assault on a prisoner. The conduct is of a type mentioned in section 18(1) of the Act.³³ W discloses the conduct to the chief executive (corrective services). The chief executive

31 Section 19 (Anybody may disclose danger to person with disability or to environment from particular contraventions)

32 Section 17 (Public officer may disclose negligent or improper management affecting public funds)

33 Section 18 (Public officer may disclose danger to public health or safety or environment)

Schedule 3 (continued)

(corrective services) is an appropriate entity to receive the disclosure because it is about the conduct of the entity's staff.

- 4 W, a police officer, has information that certain other police officers are not investigating certain offences in return for corrupt payments. The conduct is official misconduct mentioned in section 15 of the Act.³⁴ W discloses the conduct to the Queensland Police Service. The Queensland Police Service is an appropriate entity to receive the disclosure because it is about the conduct of one of its officers.
- 5 W, an employee of a State instrumentality, has information that a senior officer of the instrumentality has misappropriated funds from the instrumentality. The conduct is official misconduct mentioned in section 15 of the Act. W discloses the conduct to the instrumentality. The instrumentality is an appropriate entity to receive the disclosure because it is about the conduct of one of its officers.

Examples, under section 26(1)(b) of the Act, of disclosures made to appropriate entities because the disclosures are about something the entities have a power to investigate or remedy—

- 1 W, an employee of a department, has information that officers of a disability service run by the department have been committing serious abuses against clients. The conduct is official misconduct mentioned in section 15 of the Act. W discloses the conduct to the Crime and Misconduct Commission. The Crime and Misconduct Commission is an appropriate entity to receive the disclosure because it involves conduct it may investigate.
- 2 W, an employee of a department, has information about the department's conduct in using negligent accounting practices resulting in substantial loss of public funds. The conduct is of a type mentioned in section 17(1) of the Act.³⁵ W discloses the

³⁴ Section 15 (Public officer may disclose official misconduct)

³⁵ Section 17 (Public officer may disclose negligent or improper management affecting public funds)

Schedule 3 (continued)

conduct to the Queensland Audit Office. The Queensland Audit Office is an appropriate entity to receive the disclosure because it involves conduct it may investigate.

- 3 W, an employee of a department, gives evidence at a hearing of the Parliamentary Public Accounts Committee inquiring into the department's management practices. At the hearing W discloses information about the department's conduct in using negligent management practices resulting in substantial loss of public funds. The conduct is of a type mentioned in section 17(1) of the Act. The Committee is an appropriate entity to receive the disclosure as it involves conduct it may investigate.
- 4 W, a corrective services officer employed by the chief executive (corrective services), has information that another corrective services officer has committed a criminal assault on a prisoner. The conduct is of a type mentioned in section 18(1) of the Act.³⁶ W discloses the conduct to the Queensland Police Service. The Queensland Police Service is an appropriate entity to receive the disclosure because it involves conduct it may investigate.
- 5 W, an employee of a private sector company, has information that the company has committed an offence against the *Environmental Protection Act 1994* that is a substantial and specific danger to the environment. The conduct is of a type mentioned in section 19(1)(b) of the Act.³⁷ W discloses the conduct to the department in which the *Environmental Protection Act 1994* is administered. The department is an appropriate entity to receive the disclosure because it involves conduct it may investigate.
- 6 W, an employee of a shipping company, has information that a ship owned by the company has discharged oil into coastal waters of Queensland. The conduct is an offence under the *Transport Operations (Marine Pollution) Act 1995* and is a

36 Section 18 (Public officer may disclose danger to public health or safety or environment)

37 Section 19 (Anybody may disclose danger to person with disability or to environment from particular contraventions)

Schedule 3 (continued)

substantial and specific danger to the environment. The conduct is of a type mentioned in section 19(1)(b) of the Act. W discloses the conduct to the department in which the *Transport Operations (Marine Pollution) Act 1995* is administered. The department is an appropriate entity to receive the disclosure because it is about conduct it may investigate.

- 7 W, an employee of a State instrumentality, has information that a senior officer of the instrumentality has misappropriated funds of the instrumentality. The conduct is official misconduct mentioned in section 15 of the Act, involving the commission of an offence. W discloses the conduct to the Queensland Police Service. The Queensland Police Service is an appropriate entity to receive the disclosure because it is about conduct it may investigate.
- 8 W, a police officer, has information that certain other police officers are not investigating certain offences in return for corrupt payments. The conduct is official misconduct mentioned in section 15 of the Act, involving official misconduct within the meaning of the *Crime and Misconduct Act 2001*. The Crime and Misconduct Commission is an appropriate entity to receive the disclosure because it is about conduct it may investigate.

Schedule 5 Sectional definitions

section 4(2) of the Act

1 **Meaning of *chief executive officer***

- (1) The *chief executive officer* of an appropriate entity includes, if the entity is listed in schedule 1 of the Act, a person specified in the schedule as chief executive officer of the entity.
- (2) A regulation may specify a person who is to be treated as a chief executive officer of a particular public sector entity for all or particular public interest disclosures.
- (3) The object of a specification under schedule 1 of the Act or a regulation is—
 - (a) to make it easier to identify who is to be treated as the chief executive officer, particularly of entities for which this might otherwise be difficult to decide; or
 - (b) to provide for a person other than a chief executive officer to be also treated as a chief executive officer because the function given to chief executive officers under this Act may also be appropriately given to the person.
- (4) A regulation under subsection (2) may not specify a chief executive officer for a public sector entity specified in schedule 1 of the Act, other than a part of a department.

2 **Meaning of *public sector entity***

- (1) A *public sector entity* is any of the following—
 - (a) a committee of the Legislative Assembly;
 - (b) the Parliamentary Service;
 - (c) a court or tribunal;
 - (d) the administrative office of a court or tribunal;
 - (e) the Executive Council;

Schedule 5 (continued)

- (f) a department;
 - (g) a local government;
 - (h) a university, university college, TAFE institute or agricultural college;
 - (i) a commission, authority, office, corporation or instrumentality established under an Act or under State or local government authorisation for a public, State or local government purpose;
 - (j) a GOC, but only to the extent indicated under part 4, division 5 of the Act;
 - (k) an entity, prescribed by regulation, that is assisted by public funds;
 - (l) a corporatised corporation, but only to the extent indicated under part 4, division 6 of the Act.
- (2) However, the following are not public sector entities—
- (a) a GOC, other than to the extent indicated under part 4, division 5 of the Act;
 - (aa) a corporatised corporation, other than to the extent indicated under part 4, division 6 of the Act;
 - (b) the following entities, under or within the meaning of the *Education (General Provisions) Act 1989*—
 - (i) a parents and citizens association;
 - (ii) a school that is not a State school;
 - (iii) an advisory committee;³⁸
 - (iv) an international educational institution;³⁹
 - (c) an entity prescribed by regulation.
- (3) For this Act—

38 See the *Education (General Provisions) Act 1989*, section 12 (Appointment of advisory committees).

39 See the *Education (General Provisions) Act 1989*, section 144 (Restriction on establishment of places for teaching overseas curriculum).

Schedule 5 (continued)

- (a) a State educational institution or school council is part of the department in which the *Education (General Provisions) Act 1989* is administered; and
- (b) a member of a school council is a public officer of that department.

Schedule 6 Dictionary

section 4(1) of the Act

administrative action is an act or omission of an administrative character done or made by, in or for a public sector entity, and includes, for example—

- (a) a decision or failure to decide; and
- (b) a formulation of a proposal or intention.

agricultural college means the agricultural college under the *Agricultural College Act 2005*.

annual report of a department means the annual report of the department required to be prepared and tabled in the Legislative Assembly under the *Financial Administration and Audit Act 1977*.

appropriate entity is a public sector entity to which a public interest disclosure may be made or referred under—

- (a) section 26 of the Act (Every public sector entity is an appropriate entity for certain things); or
- (b) section 28 of the Act (Disclosure may be referred to an appropriate entity).

chief executive officer see schedule 5, section 1 of the Act.

chief judicial officer means a judicial officer who is treated under this Act as a chief executive officer of a court or tribunal.

commission of inquiry means a commission of inquiry under the *Commissions of Inquiry Act 1950* and includes an inquiry under a commission mentioned in section 4(2)⁴⁰ of that Act.

corporatised corporation has the same meaning as in the *Local Government Act 1993*, chapter 7A, part 6.⁴¹

40 *Commissions of Inquiry Act 1950*, section 4 (Application of Act)

41 *Local Government Act 1993*, chapter 7A, part 6 was renumbered as chapter 8, part 7 under the *Local Government Legislation Amendment Act 1997*, section 53.

Schedule 6 (continued)

detriment includes—

- (a) personal injury or prejudice to safety; and
- (b) property damage or loss; and
- (c) intimidation or harassment; and
- (d) adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; and
- (e) threats of detriment; and
- (f) financial loss from detriment.

disability of a person has the same meaning as in the *Disability Services Act 1992*.

environment has the same meaning as in the *Environmental Protection Act 1994*.

investigate includes take evidence.

judicial officer includes a registrar or deputy registrar of a court or tribunal performing delegated judicial tasks.

maladministration is administrative action that is unlawful, arbitrary, unjust, oppressive, improperly discriminatory or taken for an improper purpose.

officer of a public sector entity includes—

- (a) a constituent member of the public sector entity, whether holding office by election or selection; and
- (b) an employee of the public sector entity, whether employed on a permanent or temporary basis; and
- (c) if the public sector entity is a department—the Minister responsible for its administration.

official misconduct has the same meaning as in the *Crime and Misconduct Act 2001*.

proper officer of a court or tribunal means—

- (a) for the Supreme Court, the District Court or the Childrens Court constituted by a judge—the registrar of the court; or

Schedule 6 (continued)

- (b) for a Magistrates Court or the Childrens Court constituted other than by a judge—the clerk of the court; or
- (c) for another court or tribunal—the administrative officer in charge of the administrative office attached to the court or tribunal.

public funds are funds available to, or under the control of, a public sector entity and includes, for example, public moneys within the meaning of the *Financial Administration and Audit Act 1977*.

public health or safety includes the health or safety of persons—

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

Examples of paragraph (a)—

- 1 Student under the care or control of a teacher.
- 2 Patient under the care or control of a doctor, nurse or other health professional.
- 3 Prisoner under the care and control of a corrective services officer.

public interest disclosure means a disclosure of information specified in sections 15 to 20 of the Act made to an appropriate entity and includes all information and help given by the discloser to an appropriate entity.

public officer is a person who is an officer of a public sector entity, and includes—

- (a) a public sector entity that is a corporation; and
- (b) only to allow a member of the Legislative Assembly to make a public interest disclosure—a member of the Legislative Assembly.

Schedule 6 (continued)

public sector contractor is a person who contracts with a public sector entity to supply goods to the entity or services to the entity other than as an employee.

public sector entity see schedule 5, section 2 of the Act.

relevant court or tribunal of a judicial officer is the court or tribunal of which the judicial officer is a member or is attached.

relevant department, for an administrative office attached to a court or tribunal, means the department in which is administered the Act under which the court or tribunal is established.

reprisal see section 41 of the Act.

school council means a school council established for a State school, under the *Education (General Provisions) Act 1989*, section 30X.⁴²

State educational institution has the same meaning as in the *Education (General Provisions) Act 1989*.

TAFE institute see the *Vocational Education, Training and Employment Act 2000*, section 191.⁴³

tribunal means—

- (a) a tribunal constituted by a person acting judicially; or
- (b) a body or person performing a function under an Act to hear appeals by employees about dismissal from employment, disciplinary action or other unfair treatment; or

42 The *Education (General Provisions) Act 1989*, section 30X was renumbered as section 50 under the *Education and Other Legislation Amendment Act 1997*, section 36. Under the *Education (General Provisions) Act 1989*, section 50, the chief executive may, by notice in the Education Office gazette, establish a school council for a State school.

43 The *Vocational Education, Training and Employment Act 2000*, section 191, defines *TAFE institute* as follows—

TAFE institute, is an institution operated by the State that provides vocational education and training.

Schedule 6 (continued)

- (c) a commission of inquiry; or
- (d) a Misconduct Tribunal under the *Misconduct Tribunals Act 1997*.

Endnotes

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 July 2005. Future amendments of the Whistleblowers Protection Act 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

| Key | Explanation | Key | Explanation |
|--------|--------------------------------|---------|---|
| AIA | = Acts Interpretation Act 1954 | (prev) | = previously |
| amd | = amended | proc | = proclamation |
| amdt | = amendment | prov | = provision |
| ch | = chapter | pt | = part |
| def | = definition | pubd | = published |
| div | = division | R[X] | = Reprint No.[X] |
| exp | = expires/expired | RA | = Reprints Act 1992 |
| gaz | = gazette | reloc | = relocated |
| hdg | = heading | renum | = renumbered |
| ins | = inserted | rep | = repealed |
| lap | = lapsed | (retro) | = retrospectively |
| notfd | = notified | rv | = revised edition |
| o in c | = order in council | s | = section |
| om | = omitted | sch | = schedule |
| orig | = original | sdiv | = subdivision |
| p | = page | SIA | = Statutory Instruments Act 1992 |
| para | = paragraph | SIR | = Statutory Instruments Regulation 2002 |
| prec | = preceding | SL | = subordinate legislation |
| pres | = present | sub | = substituted |
| prev | = previous | unnum | = unnumbered |

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

| Reprint No. | Amendments to | Effective | Reprint date |
|-------------|-----------------|-------------------|-------------------|
| 1 | none | 16 December 1994 | 2 March 1995 |
| 1A | 1995 Act No. 38 | 15 September 1995 | 28 June 1996 |
| 1B | 1996 Act No. 37 | 1 December 1996 | 12 December 1996 |
| 1C | 1996 Act No. 61 | 20 December 1996 | 23 January 1997 |
| 1D | 1997 Act No. 23 | 22 May 1997 | 6 June 1997 |
| 1E | 1997 Act No. 83 | 8 December 1997 | 17 December 1997 |
| 2 | 1997 Act No. 83 | 1 January 1998 | 1 April 1999 |
| 2A | 1999 Act No. 33 | 1 July 1999 | 28 July 1999 |
| 3 | 2000 Act No. 23 | 27 June 2000 | 1 September 2000 |
| 3A | 2000 Act No. 34 | 28 September 2000 | 29 September 2000 |
| 3B | 2001 Act No. 73 | 3 December 2001 | 14 December 2001 |
| 3C | 2001 Act No. 73 | 1 January 2002 | 15 January 2002 |
| 3D | 2001 Act No. 73 | 19 April 2002 | 3 May 2002 |

| Reprint No. | Amendments included | Effective | Notes |
|-------------|---------------------|----------------|-------|
| 3E | 2003 Act No. 19 | 9 May 2003 | |
| 3F | 2003 Act No. 63 | 1 January 2004 | |
| 3G | 2003 Act No. 79 | 16 April 2004 | |
| 3H | 2005 Act No. 20 | 1 July 2005 | |

5 Tables in earlier reprints

| Name of table | Reprint No. |
|------------------------|-------------|
| Corrected minor errors | 1 |

6 List of legislation

Whistleblowers Protection Act 1994 No. 68

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 16 December 1994 (1994 SL No. 441)

amending legislation—

Parliamentary Committees Act 1995 No. 38 ss 1–2, 35 sch 1

date of assent 15 September 1995

commenced on date of assent

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Health Legislation Amendment Act (No. 2) 1996 No. 61 ss 1–2, 15 sch

date of assent 9 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 20 December 1996 (1996 SL No. 402)

Local Government Legislation Amendment Act 1997 No. 23 pts 1, 4

date of assent 22 May 1997

commenced on date of assent

Misconduct Tribunals Act 1997 No. 59 ss 1–2, 48 sch 1

date of assent 5 November 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 8 December 1997 (1997 SL No. 417)

Education and Other Legislation Amendment Act 1997 No. 83 pts 1, 12

date of assent 5 December 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 1998 (1997 SL No. 464)

Corrective Services Legislation Amendment Act 1999 No. 9 pt 1 sch

date of assent 30 March 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 1999 (1999 SL No. 72)

Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch

date of assent 30 April 1999

commenced on date of assent

Industrial Relations Act 1999 No. 33 ss 1, 2(2), 747 sch 3

date of assent 18 June 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1999 (1999 SL No. 159)

Training and Employment Act 2000 No. 23 ss 1, 2(3), 293 sch 2

date of assent 27 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 28 September 2000 (2000 SL No. 248)

Water Act 2000 No. 34 ss 1–2, 1145 sch 3

date of assent 13 September 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 19 April 2002 (2002 SL No. 69) (provisions were to commence 13 September 2002 (automatic commencement under AIA s 15DA(2) (2001 SL No. 158 s 2)))

Corrective Services Act 2000 No. 63 ss 1, 2(2), 276 sch 2

date of assent 24 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2001 (2001 SL No. 88) (remaining provisions were to commence 2 April 2001 but the commencing proclamation (2000 SL No. 335) was repealed (2001 SL No. 23))

Crime and Misconduct Act 2001 No. 69 ss 1–2, 378 sch 1

date of assent 8 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (2001 SL No. 221)

Ombudsman Act 2001 No. 73 ss 1–2, 96 sch 1

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 3 December 2001 (2001 SL No. 224)

Statute Law (Miscellaneous Provisions) Act 2003 No. 19 ss 1, 3 sch

date of assent 9 May 2003

commenced on date of assent

Training Reform Act 2003 No. 63 ss 1, 2(2), 60 sch

date of assent 13 October 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2004 (2003 SL No. 293)

Aboriginal Cultural Heritage Act 2003 No. 79 ss 1–2, 170 sch 1

date of assent 6 November 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 16 April 2004 (2004 SL No. 36)

Agricultural College Act 2005 No. 20 ss 1–2, 60 sch 1

date of assent 19 May 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2005 (2005 SL No. 116)

7 List of annotations

What is the general nature of the Act's scheme?

s 7 amd 1997 No. 23 s 56

Public disclosures made by public officers (pt 3)

s 8 amd 2001 No. 69 s 378 sch 1

How must a public interest disclosure be made (pt 4)?

s 10 amd 1997 No. 23 s 57

What is the special protection given for public interest disclosures (pt 5)?

s 11 amd 1996 No. 37 s 147 sch 2

Every public sector entity is an appropriate entity for certain things

s 26 amd 1997 No. 23 s 58

How to disclose to appropriate entity

s 27 amd 1997 No. 23 s 59; 2001 No. 69 s 378 sch 1

Disclosure may be referred to an appropriate entity

s 28 amd 2001 No. 69 s 378 sch 1

Units must report to Legislative Assembly on disclosures

s 30 amd 1997 No. 23 s 60

Minister must report to Legislative Assembly on Act's administration

s 31 amd 1997 No. 23 s 61

Reasonable information about result of disclosure must be given to discloser or referring agency

s 32 amd 2001 No. 69 s 378 sch 1

Disclosures made administratively to or about a judicial officer

s 34 amd 2001 No. 69 s 378 sch 1

Application of Act to GOCs

s 37 amd 2001 No. 69 s 378 sch 1

Division 6—Limitation on disclosure process for corporatised corporations

div hdg ins 1997 No. 23 s 62

Object of division

s 37A ins 1997 No. 23 s 62

Application of Act to corporatised corporationss 37B ins 1997 No. 23 s 62
amd 2001 No. 69 s 378 sch 1**Damages entitlement for reprisal**

s 43 amd 1999 No. 19 s 3 sch

Relocation of public service employees

s 46 sub 1996 No. 37 s 147 sch 2

Right to apply for Industrial Commission Injunction

s 47 amd 1999 No. 33 s 747 sch 3; 2001 No. 69 s 378 sch 1

Right to apply for Supreme Court injunction

s 48 amd 2001 No. 69 s 378 sch 1

Undertakings as to damages and costs

s 54 amd 2001 No. 69 s 378 sch 1

Misconduct by breach of Act

s 57 amd 2001 No. 69 s 378 sch 1

Amendment of other Acts

s 62 om R1 (see RA s 40)

SCHEDULE 1—CHIEF EXECUTIVE OFFICERS

amd 1995 No. 38 s 35 sch 1; 1996 No. 61 s 15 sch; 2001 No. 73 s 96 sch 1

SCHEDULE 2—OFFENCES ENDANGERING THE ENVIRONMENT

amd 2000 No. 34 s 1145 sch 3; 2003 No. 19 s 3 sch; 2003 No. 79 s 170 sch 1

SCHEDULE 3—EXAMPLES OF APPROPRIATE ENTITIES IN PARTICULAR CIRCUMSTANCES

amd 2000 No. 63 s 276 sch 2; 2001 No. 69 s 378 sch 1

SCHEDULE 4—AMENDMENTS

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SCHEDULE 5—SECTIONAL DEFINITIONS**Meaning of “chief executive officer”**

s 1 amd 2003 No. 19 s 3 sch

Meaning of “public sector entity”

s 2 amd 1995 No. 38 s 35 sch 1; 1997 No. 23 s 63; 1997 No. 83 s 61; 2000 No. 23 s 293 sch 2

SCHEDULE 6—DICTIONARY

def “**agricultural college**” sub 2005 No. 20 s 60 sch 1

def “**corporatised corporation**” ins 1997 No. 23 s 64

def “**official misconduct**” amd 2001 No. 69 s 378 sch 1

def “**proper officer**” amd 1999 No. 19 s 3 sch

def “**public health or safety**” amd 2000 No. 63 s 276 sch 2

def “**Regional Health Authority**” om 1996 No. 61 s 15 sch

def “**relevant department**” sub 1996 No. 61 s 15 sch

def “**school council**” ins 1997 No. 83 s 62

def “**State college**” om 2000 No. 23 s 293 sch 2

def “**TAFE institute**” ins 2000 No. 23 s 293 sch 2

amd 2003 No. 63 s 60 sch

def “**tribunal**” amd 1997 No. 59 s 48 sch 1