

Queensland



# **WHISTLEBLOWERS PROTECTION ACT 1994**

**Act No. 68 of 1994**

Queensland



# WHISTLEBLOWERS PROTECTION ACT 1994

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Queensland



## **Whistleblowers Protection Act 1994**

**Act No. 68 of 1994**

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**An Act to protect whistleblowers and for other purposes**

*[Assented to 1 December 1994]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### *Division 1—Title and commencement*

#### **Short title**

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

#### **Commencement**

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

### *Division 2—Object of Act*

#### **Principal object of Act**

3. 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***

#### **Definitions and dictionary**

4.(1) The dictionary<sup>1</sup> 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***

#### **Act generally binding**

5. This Act binds all persons, including the State.

#### **Other protection saved**

6. 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**

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

7.(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

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<sup>1</sup> In some Acts, definitions are contained in a dictionary that appears as the last Schedule and forms part of the Act—*Acts Interpretation Act 1954*, s 14.



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.

(3) The scheme gives protection only to a **“public interest disclosure”**,<sup>2</sup> 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.

### **Public disclosures made by public officers (Pt 3)**

8.(1) Under section 15, a public officer may disclose **“official misconduct”**, an expression defined in the *Criminal Justice Act 1989*.

(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”**.

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<sup>2</sup> Each expression in this Part that is in bold type and in quotation marks is defined either in the dictionary or in a section signposted by the dictionary.

(4) Under section 17, a public officer may disclose negligent or improper management involving a substantial waste of **“public funds”**.

(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.

### **Public interest disclosures made by anybody**

**9.(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.

### **How must a public interest disclosure be made (Pt 4)?**

**10.(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.

(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.

### **What is the special protection given for public interest disclosures (Pt 5)?**

**11.(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) officers of the public service and departmental employees are given the additional right to appeal to the Commissioner for Public Sector Equity 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.

**General sections (Pt 6)**

**12.(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**

### **Purpose of Part**

**13.** 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.

### **What type of information can be disclosed?**

**14.(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.

### **Public officer may disclose official misconduct**

**15.** A public officer<sup>3</sup> may make a public interest disclosure about someone else's conduct if—

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<sup>3</sup> 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.

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

### **Public officer may disclose maladministration**

**16.** 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.

### **Public officer may disclose negligent or improper management affecting public funds**

**17.(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.

### **Public officer may disclose danger to public health or safety or environment**

**18.(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)** The public officer may make a public interest disclosure of the information.

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

**19.(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.

**Anybody may disclose reprisal**

**20.** 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.

**Conduct of unknown person**

**21.** 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.

**Involuntary disclosures**

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

**Disclosure of events that happened before commencement**

**23.** 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*

#### **Purpose of Part**

**24.** 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*

#### **Disclosure must be made to an appropriate entity**

**25.(1)** Section 26 specifies appropriate entities to which public interest disclosures may be made.<sup>4</sup>

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

#### **Every public sector entity is an appropriate entity for certain things**

**26.(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

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<sup>4</sup> See Division 4 for overriding limitations about courts, tribunals and judicial officers and Division 5 for overriding limitations about statutory GOCs.



- (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.<sup>5</sup>

(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 or 5.<sup>6</sup>

(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).

### **How to disclose to appropriate entity**

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

(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;<sup>7</sup> 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

<sup>5</sup> Section 28 (Disclosure may be referred to an appropriate entity)

<sup>6</sup> Division 4 (Limitation on disclosure process for courts, tribunals and judicial officers)  
Division 5 (Limitation on disclosure process for GOCs)

<sup>7</sup> See Schedule 5, section 1 for the definition of “chief executive”.

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 Division 4 and 5.<sup>8</sup>

*Examples of subsection (3)(d)—*

1. The entity's internal auditor, if the public interest disclosure is made under section 17.<sup>9</sup>

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).<sup>10</sup>

3. The officer of the entity in charge of its human resource management if the public interest disclosure is made under section 20<sup>11</sup> and is about detriment to the career of an employee of the entity.

*Example of subsection (4)—*

This Act does not affect the requirement under the *Criminal Justice Act 1989* that all complaints and information about misconduct to be brought to the notice of the Criminal Justice Commission must be communicated to the Commission's Complaints Section.<sup>12</sup>

<sup>8</sup> Division 4 (Limitation on disclosure process for courts, tribunals and judicial officers)  
Division 5 (Limitation on disclosure process for GOCs)

<sup>9</sup> Section 17 (Public officer may disclose negligent or improper management affecting public funds)

<sup>10</sup> Section 18 (Public officer may disclose danger to public health or safety or environment)  
Section 19 (Anybody may disclose danger to person with disability or to environment from particular contraventions)

<sup>11</sup> Section 20 (Anybody may disclose reprisal)

<sup>12</sup> See *Criminal Justice Act 1989*, s 36(5).

**Disclosure may be referred to an appropriate entity**

**28.(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.

*Example—*

The duty of a principal officer in a unit of public administration within the meaning of the *Criminal Justice Act 1989* to refer suspected official misconduct to the Criminal Justice Commission as required by that Act is unaffected.<sup>13</sup>

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<sup>13</sup> See *Criminal Justice Act 1989*, s 37(2).

***Division 3—Records and reports about disclosures*****Records must be kept of disclosures**

**29.(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 5<sup>14</sup> 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.

**Units must report to Legislative Assembly on disclosures**

**30.(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

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<sup>14</sup> Part 5 (Privilege, Protection and Compensation)

(c) a GOC.

**“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.

### **Minister must report to Legislative Assembly on Act’s administration**

**31.(1)** In this section—

**“public sector entity”** does not include—

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

(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.

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

**32.(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 Criminal Justice Commission in a complaint of misconduct or official misconduct, this section does not impose on the Commission any duty that the director of the Commission's Official Misconduct Division does not already have under that Act.<sup>15</sup>

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<sup>15</sup> The *Criminal Justice Act 1989*, under section 33(4) to (6), regulates the release of information to complainants under that Act by the director of the Criminal Justice Commission's Official Misconduct Division.

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

**Object of Division**

**33.(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.

**Disclosures made administratively to or about a judicial officer**

**34.(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 15<sup>16</sup> 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 Criminal Justice Commission.

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<sup>16</sup> Section 15 (Public officer may disclose official misconduct)

(4) A public interest disclosure under section 16, 17, 18 or 19<sup>17</sup> 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 Criminal Justice 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,<sup>18</sup> 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.

### **Disclosures in court or tribunal proceedings**

**35.(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.

(3) The disclosure is a public interest disclosure made to the court or

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

<sup>18</sup> Section 28 (Disclosure may be referred to an appropriate entity)



tribunal as an appropriate entity under section 26(1)(b).<sup>19</sup>

(4) The court or tribunal may refer the disclosure to another appropriate entity under section 28.<sup>20</sup>

(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***

#### **Object of Division**

**36.(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.

#### **Application of Act to GOCs**

**37.(1)** An officer of a statutory GOC may, under section 15, 16 or 18,<sup>21</sup> 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 Criminal Justice Commission about the conduct of the statutory GOC or the conduct of another officer of the statutory GOC.

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<sup>19</sup> Section 26 (Every public sector entity is an appropriate entity for certain things)

<sup>20</sup> Section 28 (Disclosure may be referred to an appropriate entity)

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

(3) An officer of a statutory GOC may, under section 17,<sup>22</sup> 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),<sup>23</sup> to the statutory GOC; or
- (b) if the reprisal is official misconduct—to the Criminal Justice 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<sup>24</sup> 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

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<sup>22</sup> Section 17 (Public officer may disclose negligent and improper management affecting public funds)

<sup>23</sup> Section 26 (Every public sector entity is an appropriate entity for certain things)

<sup>24</sup> Section 17 (Public officer may disclose negligent or improper management affecting public funds)

by anybody under section 19 or 20.<sup>25</sup>

(8) This section does not affect the reference under section 28<sup>26</sup>—

- (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.

## **PART 5—PRIVILEGE, PROTECTION AND COMPENSATION**

### *Division 1—Purpose of Part*

#### **Purpose of Part**

**38.** 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*

#### **General limitation**

**39.(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

<sup>25</sup> Section 19 (Anybody may disclose danger to person with disability or to environment from particular contraventions)  
Section 20 (Anybody may disclose reprisal)

<sup>26</sup> Section 28 (Disclosure may be referred to an appropriate entity)

- 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.

### **Liability of discloser unaffected**

**40.** 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***

#### **Reprisal and grounds for reprisal**

**41.(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*****Reprisal is an indictable offence**

**42.(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, sections 7 and 8<sup>27</sup> of the Criminal Code 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*****Damages entitlement for reprisal**

**43.(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 a District Court, it must be decided by a Judge sitting without a jury.

***Division 6—Administrative action about reprisal*****Public sector entity must protect its officers against reprisals**

**44.** 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.

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<sup>27</sup> Criminal Code, section 7 (Principal offenders)  
Criminal Code, section 8 (Offences committed in prosecution of common purpose)

### Appeal against action affected by reprisal

**45.(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;
- (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.

### Relocation of public sector employee

**46.(1)** This section—

- (a) must be read with the *Public Sector Management Commission Act 1990*; and
- (b) gives a right to appeal for the relocation of an officer of the public service or employee of a department (the “**employee**”).

**(2)** The appeal may be made on the ground that—

- (a) it is likely a reprisal will be taken against the 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 Commissioner for Public Sector Equity by the employee or for the employee by the chief executive of the employee’s department.

**(4)** If the Commissioner considers the ground is proved, the Commissioner may recommend to the Governor in Council that the employee and, if the employee is an officer of the public service, the employee’s position be relocated—

- (a) if the employee is an officer of the Senior Executive

Service—within the public sector; or

- (b) if the employee is not an officer of the Senior Executive Service—within the employee's department or another department.

(5) The Commissioner cannot recommend the relocation without the consent of—

- (a) the employee; and
- (b) if the relocation is to another unit of the public sector—the other unit's chief executive officer.

(6) The Governor in Council may relocate the employee and, if the employee is an officer of the public service, the employee's position—

- (a) if the employee is an officer of the Senior Executive Service—within the public sector; or
- (b) if the employee is not an officer of the Senior Executive Service—within the employee's department or another department.

(7) For subsection (6), the Governor in Council has power to do, or authorise the doing of, anything necessary or convenient to relocate the employee, including—

- (a) abolishing an office in the public service held by the employee and creating another to be held by the employee; or
- (b) ending the employee's appointment to an office and appointing the employee to another for which the maximum salary is no less than the previous office's.

### *Division 7—Injunctions about reprisal*

#### **Right to apply for Industrial Commission injunction**

**47.(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 1990*; and

- (b) involves or may involve a breach of the *Industrial Relations Act 1990*, 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 Criminal Justice 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 Criminal Justice Commission may investigate.

(3) Section 42<sup>28</sup> of the *Industrial Relations Act 1990* 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.

(5) Without limiting this section, the application is an industrial cause within the meaning of the *Industrial Relations Act 1990*.

### **Right to apply for Supreme Court injunction**

**48.(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) ~~the person from whom the reprisal is made~~ the person is suffering or may suffer

<sup>28</sup> *Industrial Relations Act 1990*, section 42 (Power to grant injunctions)



- (b) the Criminal Justice 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 Criminal Justice Commission may investigate.

### **Grounds for injunction**

**49.** 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.

### **Order may require specified action**

**50.** 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.

### **Evidence**

**51.(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.

### **Interim injunction**

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

### **Confidentiality of applications**

**53.(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.

### **Undertakings as to damages and costs**

54. If the Criminal Justice Commission applies for an injunction, no undertaking about damages or costs is to be required.

## **PART 6—GENERAL**

### **Preservation of confidentiality**

55.(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).

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, this section prevails.

(7) In this section—

**“confidential information”** includes—

- (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.

### **False or misleading information**

**56.(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.

### **Misconduct by breach of Act**

**57.(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 section 29(3)(d)<sup>29</sup> of the *Criminal Justice Act 1989*, the Criminal Justice 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 *Criminal Justice Act 1989*.

### **Proceedings for offences generally**

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

### **Proceedings for indictable offences**

**59.(1)** A proceeding on a charge for an indictable offence under this Act

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<sup>29</sup> *Criminal Justice Act 1989*, section 29 (Role and functions)

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.

### **Change to a committal proceeding during summary proceeding**

**60.(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 section 104 of the *Justices Act 1886*<sup>30</sup> must be complied with for the committal proceeding.

### **Regulation making power**

**61.(1)** The Governor in Council may make regulations under this Act.

(2) A regulation may provide that, for all or particular public interest disclosures—

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<sup>30</sup> *Justices Act 1886*, section 104 (Proceedings on an examination of witnesses in relation to an indictable offence)

- (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);<sup>31</sup> 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
  - (c) be inconsistent with a requirement under an Act that a public sector entity act independently.

### **Amendment of other Acts**

**62.** Schedule 4 amends the Acts mentioned in it.

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<sup>31</sup> Schedule 5, section 2 (Meaning of “public sector entity”)

**SCHEDULE 1****CHIEF EXECUTIVE OFFICERS**

Schedule 5, section 1

<b>Public sector entities</b>	<b>Chief executive officers</b>
Legislative Assembly committee	Speaker or chairperson
Parliamentary Service Commission and 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
Regional Health Authority	chairperson, regional director or chief executive of the relevant department
statutory GOC	director or chief executive officer



## SCHEDULE 1 (continued)

office of the Commissioner for Investigations	Parliamentary Administrative	Parliamentary Commissioner for Administrative Investigations
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**SCHEDULE 2****OFFENCES ENDANGERING THE ENVIRONMENT**

section 19(1)(b) and (c)

**Clean Air Act 1963**

- Section 46(3A) (Special penalties in certain cases)

**Clean Waters Act 1971**

- Section 48 (Special penalties in certain cases)

**Contaminated Land Act 1991**

- Section 13 (Prohibition of land contamination)
- Section 14(2), (3) or (4) (Sites for disposal of hazardous substances)
- Section 17(1), (2), (3) or (4) (Notification of contamination)
- Section 20(4) (Notice to remediate contaminated land)

**Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987**

- Section 56(1) or (2) (Offences concerning Queensland Estate)

**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.)

**SCHEDULE 2 (continued)**

- 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.)

**Land Act 1962**

- Section 250(1) (Tree clearing permit)
- Section 372(1) (Trespass to Crown land etc. and removal of trespassers)

**Mineral Resources Act 1989**

- Section 6.15 (Conditions of mineral development licence)
- Section 6.27 (Contravention by holder of mineral development licence)
- Section 7.33 (Conditions of mining lease)

**Nature Conservation Act 1992**

- Section 81(1) (Restriction on taking etc. protected animals)
- Section 82(1) (Restriction on taking etc. protected plants)
- Section 83 (Prohibition on release etc. of international and prohibited wildlife)

## SCHEDULE 2 (continued)

- Section 84 (Prohibition on breeding etc. hybrids of protected animals)
- Section 85 (Aborigines' and Torres Strait Islanders' rights to take etc. protected wildlife)
- Section 86 (Conservation officers prohibited in dealing with protected wildlife)
- Section 89(2) (Restriction on taking etc. of native wildlife in areas of major interest and critical habitats)
- Section 101 (Compliance with order)

**Petroleum Act 1923**

- Section 63A (Penalties)

**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)

**Transport Operations (Marine Pollution) Act 1994**

- All provisions for which a contravention is an offence

## SCHEDULE 2 (continued)

**Water Resources Act 1989**

- Section 4.44 (Destruction of vegetation, excavation or placing of fill)
- Section 4.48(3) (Suspension of permit in exceptional circumstances)
- Section 4.50(2) (Notice to stop activities)
- Section 4.51(2) (Notice to remove vegetation)

### SCHEDULE 3

## EXAMPLES OF APPROPRIATE ENTITIES IN PARTICULAR CIRCUMSTANCES

section 26

*Examples, under section 26(1)(a), 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).<sup>32</sup> 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.<sup>33</sup> 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 prison officer employed by the Corrective Services Commission, has information that another prison officer has committed a criminal assault on a prisoner. The conduct is of a type mentioned in section 18(1).<sup>34</sup> W discloses the conduct to the Corrective Services Commission. The Corrective Services Commission is an appropriate entity to receive the disclosure because it is about the conduct of its staff.

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<sup>32</sup> Section 19 (Anybody may disclose danger to person with disability or to environment from particular contraventions)

<sup>33</sup> Section 17 (Public officer may disclose negligent or improper management affecting public funds)

<sup>34</sup> Section 18 (Public officer may disclose danger to public health or safety or environment)

## SCHEDULE 3 (continued)

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.<sup>35</sup> 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. 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 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. W discloses the conduct to the Criminal Justice Commission. The Criminal Justice 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).<sup>36</sup> W discloses the 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

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<sup>35</sup> Section 15 (Public officer may disclose official misconduct)

<sup>36</sup> Section 17 (Public officer may disclose negligent or improper management affecting public funds)

## SCHEDULE 3 (continued)

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). The Committee is an appropriate entity to receive the disclosure as it involves conduct it may investigate.

4. W, a prison officer employed by the Corrective Services Commission, has information that another prison officer has committed a criminal assault on a prisoner. The conduct is of a type mentioned in section 18(1).<sup>37</sup> 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).<sup>38</sup> 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 1994* and is a substantial and specific danger to the environment. The conduct is of a type mentioned in section 19(1)(b). W discloses the conduct to the department in which the *Transport Operations (Marine Pollution) Act 1994* 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

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<sup>37</sup> Section 18 (Public officer may disclose danger to public health or safety or environment)

<sup>38</sup> Section 19 (Anybody may disclose danger to person with disability or to environment from particular contraventions)



## SCHEDULE 3 (continued)

senior officer of the instrumentality has misappropriated funds of the instrumentality. The conduct is official misconduct mentioned in section 15, 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, involving official misconduct within the meaning of the *Criminal Justice Act 1989*. The Criminal Justice Commission is an appropriate entity to receive the disclosure because it is about conduct it may investigate.

**SCHEDULE 4****AMENDMENTS**

section 62

**FREEDOM OF INFORMATION ACT 1992****1. Schedule—***insert—**‘Whistleblowers Protection Act 1994, section 55(1)’.***HEALTH RIGHTS COMMISSION ACT 1991****1. Section 3(1), definition “detriment”—***omit, insert—***‘“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.’.

**2. Section 135(1), ‘in good faith’—***omit, insert—**‘honestly and on reasonable grounds’.*

## SCHEDULE 4 (continued)

**3. After section 135—**

*insert—*

**‘False or misleading information**

**‘135A.(1)** A person commits an offence if the person—

- (a) makes a statement to the Commissioner with the intent that it be acted on as a health service complaint; 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 to the Commissioner or another entity to which the complaint has been referred.

Maximum penalty—167 penalty units or 2 years imprisonment.

**‘(2)** The offence is an indictable offence.’.

**4. Section 139(6), penalty—**

*omit, insert—*

‘Maximum penalty—167 penalty units or 2 years imprisonment’.

**5. Section 139(7)—**

*renumber* as subsection (8).

**6. Section 139—**

*insert—*

**‘(7)** The offence is an indictable offence.’.

**7. After section 139—**

*insert—*

## SCHEDULE 4 (continued)

**‘Damages entitlement for reprisal**

‘**139A.(1)** Unlawful reprisal is a tort and a person who takes an unlawful reprisal is liable in damages to any person 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 an unlawful reprisal.

‘**(3)** If the claim for the damages goes to trial in the Supreme Court or a District Court, it must be decided by a Judge sitting without a jury.’

**8. Section 141—**

*omit, insert—*

**‘Proceedings for offences generally**

‘**141.(1)** An offence against this Act other than an offence declared to be an indictable offence is a summary offence.

‘**(2)** A summary proceeding for the offence must start within whichever is the longer of the following—

- (a) 1 year after the commission of the offence;
- (b) 1 year after the offence comes to the knowledge of the Commissioner, but within 2 years after the commission of the offence.

**‘Proceedings for indictable offences**

‘**141A.(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

## SCHEDULE 4 (continued)

(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.

**‘Change to committal proceeding during summary proceeding**

‘141B.(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 that 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 is taken to be evidence in the committal proceedings.

‘(5) To remove doubt, it is declared that section 104 of the *Justices Act 1886* must be complied with for the committal proceedings.’.

## INDUSTRIAL RELATIONS ACT 1990

**1. Section 291(2)(b)(iv) to (vi)—**

*renumber* as section 291(2)(b)(v) to (vii).

**2. Section 291(2)(b)—**

*insert—*

‘(iv) the making by anybody, or a belief that anybody has made or may make—

## SCHEDULE 4 (continued)

- (A) a public interest disclosure under the *Whistleblowers Protection Act 1994*; or
- (B) a complaint under the *Health Rights Commission Act 1991*.’.

**3. Section 291(3), ‘subsection (2)(b)(iv)’—**

*omit, insert—*

‘subsection (2)(b)(v)’.

**PUBLIC SECTOR MANAGEMENT COMMISSION  
ACT 1990****1. Section 5.3, heading—**

*omit, insert—*

‘**Appeals**’.

**2. Section 5.3(1)—**

*insert—*

‘(d) anything else for which an appeal is permitted to the Commissioner under an Act.’.

**3. Section 5.3(2)—**

*insert—*

‘(d) if the appeal is about anything else for which an appeal is permitted under an Act—a person or entity permitted to appeal under the Act that permits the appeal.’.

## SCHEDULE 5

### SECTIONAL DEFINITIONS

section 4(2)

#### Meaning of “chief executive officer”

**1.(1)** The “**chief executive officer**” of an appropriate entity includes, if the entity is listed in Schedule 1, 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 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 the Schedule 1, other than a part of a department.

#### Meaning of “public sector entity”

**2.(1)** A “**public sector entity**” is any of the following—

- (a) a committee of the Legislative Assembly;
- (b) the Parliamentary Service Commission and the Parliamentary Service;
- (c) a court or tribunal;

## SCHEDULE 5 (continued)

- (d) the administrative office of a court or tribunal;
- (e) the Executive Council;
- (f) a department;
- (g) a local government;
- (h) a university, university college, State college 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;
- (k) an entity, prescribed by regulation, that is assisted by public funds.

**(2)** However, the following are not public sector entities—

- (a) a GOC, other than to the extent indicated under Part 4, Division 5;
- (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;<sup>39</sup>
  - (iv) an international educational institution;<sup>40</sup>
- (c) an entity prescribed by regulation.

**(3)** For the purpose of this Act, a State educational institution is part of the department in which the *Education (General Provisions) Act 1989* is administered.

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<sup>39</sup> See *Education (General Provisions) Act 1989*, s 9.

<sup>40</sup> See *Education (General Provisions) Act 1989*, s 75.



## SCHEDULE 6

### DICTIONARY

section 4(1)

**“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 an agricultural college under the *Agricultural Colleges Act 1994*.

**“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 (Every public sector entity is an appropriate entity for certain things); or
- (b) section 28 (Disclosure may be referred to an appropriate entity).

**“chief executive officer”** see Schedule 5, section 1.

**“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) of that Act.

**“detriment”** includes—

- (a) personal injury or prejudice to safety; and
- (b) property damage or loss; and

## SCHEDULE 6 (continued)

- (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 *Criminal Justice Act 1989*.

**“proper officer”** of a court or tribunal means—

- (a) for the Supreme Court, a District Court or the Childrens Court constituted by a Judge—the registrar of the court; or
- (b) for a Magistrates Court or the Childrens Court constituted other than by a Judge—the clerk of the court; or

## SCHEDULE 6 (continued)

- (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 prison officer.

**“public interest disclosure”** means a disclosure of information specified in sections 15 to 20 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.

**“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.

**“Regional Health Authority”** means a Regional Health Authority established under the *Health Services Act 1991*.

**“relevant court or tribunal”** of a judicial officer is the court or tribunal of

## SCHEDULE 6 (continued)

which the judicial officer is a member or is attached.

**“relevant department”** means—

- (a) for a Regional Health Authority—the chief executive of the department in which the *Health Services Act 1991* is administered; or
- (b) for an administrative office attached to a court or tribunal—the department in which is administered the Act under which the court or tribunal is established.

**“reprisal”** see section 41.

**“State college”** has the same meaning as in the *Vocational Education, Training and Employment Act 1991*.

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

**“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
- (c) a commission of inquiry; or
- (d) a Misconduct Tribunal within the meaning of the *Criminal Justice Act 1989*.