



Queensland

Public Interest Disclosure Bill 2010



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Public Interest Disclosure Bill 2010

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2010

A Bill

for

An Act to facilitate the disclosure, in the public interest, of information about wrongdoing in the public sector, to provide protection for those who make disclosures and to make minor or consequential amendments of the legislation stated in schedule 3

[s 1]

| | |
|--|----------------|
| The Parliament of Queensland enacts— | 1 |
| | |
| Chapter 1 Preliminary | 2 |
| | |
| Part 1 Introduction | 3 |
| | |
| 1 Short title | 4 |
| This Act may be cited as the <i>Public Interest Disclosure Act 2010</i> . | 5 6 |
| | |
| 2 Commencement | 7 |
| This Act commences on a day to be fixed by proclamation. | 8 |
| | |
| Part 2 Main objects | 9 |
| | |
| 3 Main objects of Act | 10 |
| The main objects of this Act are— | 11 |
| (a) to promote the public interest by facilitating public interest disclosures of wrongdoing in the public sector; and | 12 13 14 |
| (b) to ensure that public interest disclosures are properly assessed and, when appropriate, properly investigated and dealt with; and | 15 16 17 |
| (c) to ensure that appropriate consideration is given to the interests of persons who are the subject of a public interest disclosure; and | 18 19 20 |

-
- (d) to afford protection from reprisals to persons making public interest disclosures. 1
2

Part 3 Interpretation 3

4 Definitions 4

The dictionary in schedule 4 defines particular words used in this Act. 5
6

5 Meaning of *proper authority* 7

A *proper authority* is— 8

- (a) a public sector entity; or 9
(b) a member of the Legislative Assembly. 10

6 Meaning of *public sector entity* 11

(1) A *public sector entity* is any of the following— 12

- (a) a committee of the Legislative Assembly, whether or not a statutory committee; 13
14
(b) the parliamentary service; 15
(c) a court or tribunal; 16
(d) the administrative office attached to a court or tribunal; 17
(e) the Executive Council; 18
(f) a department; 19

Note— 20

The following are, or are included in, departments— 21

- the Queensland Ambulance Service 22
- the Queensland Fire and Rescue Service 23

[s 6]

- the Queensland Police Service 1
 - (g) a local government; 2
 - (h) a university, university college, TAFE institute or
statutory TAFE institute; 3
4
 - (i) the agricultural college; 5
 - (j) an entity established under an Act or under State or local
government authorisation for a public, State or local
government purpose; 6
7
8
 - (k) an entity, prescribed under a regulation, that is assisted
by public funds. 9
10
- (2) However, the following are not public sector entities— 11
- (a) a corporate entity, other than to the extent expressly
stated in this Act; 12
13
 - (b) a GOC, other than to the extent expressly stated in this
Act; 14
15
 - (c) the following entities under the *Education (General
Provisions) Act 2006*— 16
17
 - (i) an advisory committee; 18
 - (ii) an international educational institution; 19
 - (iii) a non-State school; 20
 - (iv) a parents and citizens association; 21
 - (d) an entity prescribed under a regulation. 22
- (3) Also, a State educational institution or school council is part
of the department in which the *Education (General
Provisions) Act 2006* is administered. 23
24
25
- Note*— 26
- See also the *Corrective Services Act 2006*, section 273(5). 27

-
- 7 Meaning of *public officer*** 1
- (1) A ***public officer***, of a public sector entity, is an employee, 2
member or officer of the entity. 3
- (2) Also— 4
- (a) the Minister responsible for the administration of a 5
department is a public officer of the department; and 6
- (b) a member of a school council is a public officer of the 7
department in which the *Education (General* 8
Provisions) Act 2006 is administered; and 9
- (c) a Ministerial staff member employed in the office of a 10
Minister is a public officer of each department 11
administered by the Minister; and 12
- (d) a Ministerial staff member employed in the office of a 13
Parliamentary Secretary is a public officer of each 14
department for which the Parliamentary Secretary is 15
given responsibility under her or his functions. 16
- Note—* 17
- Under the *Constitution of Queensland 2001*, section 25, a 18
Parliamentary Secretary has the functions decided by the 19
Premier. 20
- (3) In this section— 21
- ministerial staff member*** means a person employed under the 22
the *Ministerial and Other Office Holder Staff Act 2010* as a 23
staff member in the office of a Minister. 24
- Parliamentary Secretary*** means a member of the Legislative 25
Assembly appointed as a Parliamentary Secretary under the 26
Constitution of Queensland 2001, section 24. 27
- 8 Meaning of *chief executive officer*** 28
- (1) The ***chief executive officer*** of a public sector entity includes, 29
if the entity is listed in schedule 1, a person mentioned in the 30
schedule as chief executive officer of the entity. 31

| | | |
|-------------------|--|----------------------|
| Chapter 2 | Public interest disclosures | 1 |
| Part 1 | Interpretation | 2 |
| 11 | Meaning of <i>public interest disclosure</i> | 3 |
| | <i>A public interest disclosure</i> is a disclosure under this chapter and includes all information and help given by the discloser to a proper authority for the disclosure. | 4 5 6 |
| | <i>Note—</i> | 7 |
| | This chapter sets out requirements about the information that may be disclosed and who may disclose it, to whom, and how. | 8 9 |
| Part 2 | General public interest disclosures | 10 11 |
| Division 1 | Information that may be disclosed and who may disclose it | 12 13 |
| 12 | Disclosure by any person | 14 |
| (1) | This section applies if a person (whether or not the person is a public officer) has information about— | 15 16 |
| (a) | a substantial and specific danger to the health or safety of a person with a disability; or | 17 18 |
| (b) | the commission of an offence against a provision mentioned in schedule 2, if the commission of the offence is or would be a substantial and specific danger to the environment; or | 19 20 21 22 |
| (c) | a contravention of a condition imposed under a provision mentioned in schedule 2, if the contravention | 23 24 |

[s 13]

- is or would be a substantial and specific danger to the environment; or 1
2
- (d) the conduct of another person that could, if proved, be a reprisal. 3
4
- (2) The person may make a disclosure under section 17 in relation to the information to a proper authority. 5
6
- (3) For subsection (1), a person has information about the conduct of another person or another matter if— 7
8
- (a) the person honestly believes on reasonable grounds that the information tends to show the conduct or other matter; or 9
10
11
- (b) the information tends to show the conduct or other matter, regardless of whether the person honestly believes the information tends to show the conduct or other matter. 12
13
14
15
- 13 Disclosure by a public officer** 16
- (1) This section applies if a person who is a public officer has information about— 17
18
- (a) the conduct of another person that could, if proved, be— 19
- (i) official misconduct; or 20
- (ii) maladministration that adversely affects a person's interests in a substantial and specific way; or 21
22
- (b) a substantial misuse of public resources (other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure); or 23
24
25
26
- (c) a substantial and specific danger to public health or safety; or 27
28
- (d) a substantial and specific danger to the environment. 29
- (2) The person may make a disclosure under section 17 in relation to the information to a proper authority. 30
31

-
- (3) For subsection (1), a person has information about the conduct of another person or another matter if—
- (a) the person honestly believes on reasonable grounds that the information tends to show the conduct or other matter; or
 - (b) the information tends to show the conduct or other matter, regardless of whether the person honestly believes the information tends to show the conduct or other matter.

Division 2 To whom disclosure may be made 10

14 When member of the Legislative Assembly is a proper authority 11 12

- (1) A member of the Legislative Assembly is a proper authority to whom a person may make any disclosure under section 12 or 13.
- (2) However, subsection (1) does not apply to a disclosure if the information that is the subject of the disclosure relates to a judicial officer.

15 Public sector entity is a proper authority if particular connection 19 20

- (1) A public sector entity is a proper authority to which a person may make a disclosure under section 12 or 13 if—
- (a) the information that is the subject of the disclosure relates to—
 - (i) the conduct of the entity or any of its public officers; or
 - (ii) anything the entity has a power to investigate or remedy; or

[s 16]

| | | |
|-----------|--|----------------------|
| (iii) | the conduct of another person that could, if proved, be a reprisal that relates to a previous disclosure made by the person to a proper authority; or | 1 2 3 |
| (b) | the person honestly believes that the information that is the subject of the disclosure relates to a matter mentioned in paragraph (a). | 4 5 6 |
| (2) | However, subsection (1) does not apply to a disclosure if the information that is the subject of the disclosure relates to a judicial officer. | 7 8 9 |
| 16 | Chief judicial officer etc. is only proper authority | 10 |
| (1) | This section applies to a disclosure relating to a judicial officer, other than a disclosure made under section 23. | 11 12 |
| (2) | A disclosure relating to a judicial officer that could, if the conduct were proved, be official misconduct or a reprisal relating to a previous disclosure under this Act, may be made only— | 13 14 15 16 |
| (a) | to the chief judicial officer of the relevant court or tribunal; or | 17 18 |
| (b) | to the Crime and Misconduct Commission. | 19 |
| (3) | Another disclosure relating to a judicial officer may be made only to the chief judicial officer of the relevant court or tribunal. | 20 21 22 |
| (4) | A chief judicial officer of a court or tribunal may receive a public interest disclosure only if the disclosure is about the conduct of another judicial officer of the court or tribunal. | 23 24 25 |
| (5) | The chief judicial officer may refer a public interest disclosure made to the chief judicial officer about the conduct of another judicial officer to a proper authority that is a public sector entity. | 26 27 28 29 |
| (6) | Section 31(2) to (5) applies to a referral under subsection (5) as if the chief judicial officer were a public sector entity. | 30 31 |

- (7) In this section— 1
- disclosure relating to a judicial officer* means a disclosure 2
where the information that is the subject of the disclosure 3
relates to the conduct of the judicial officer. 4
- relevant court or tribunal*, for a judicial officer, is the court or 5
tribunal of which the judicial officer is a member or to which 6
the judicial officer is attached. 7

Division 3 How disclosure may be made 8

17 How disclosure to be made 9

- (1) A person may make a disclosure to a proper authority in any 10
way, including anonymously. 11
- (2) However, if a proper authority has a reasonable procedure for 12
making a public interest disclosure to the proper authority, the 13
person must use the procedure. 14
- (3) Despite subsection (2), if the proper authority is a public 15
sector entity, the person may make the disclosure to— 16
- (a) its chief executive officer; or 17
 - (b) for a public sector entity that is a department—the 18
Minister responsible for its administration; or 19
 - (c) if the proper authority that is a public sector entity has a 20
governing body—a member of its governing body; or 21
 - (d) if the person is an officer of the entity—another person 22
who, directly or indirectly, supervises or manages the 23
person; or 24
 - (e) an officer of the entity who has the function of receiving 25
or taking action on the type of information being 26
disclosed. 27
- Examples of officers for paragraph (e)—* 28
- 1 an officer of an entity’s ethical standards unit, if the 29
disclosure is made under section 13(1)(a)(i) 30

[s 18]

- | | | |
|-----|---|------------------|
| 2 | a health officer or environmental officer of a department having a statutory or administrative responsibility to investigate something mentioned in section 12(1)(a), (b) or (c) or section 13(1)(c) or (d) | 1 2 3 4 |
| 3 | the officer of an entity in charge of its human resource management if the public interest disclosure is made under section 12(1)(d) and is about detriment to the career of an employee of the entity | 5 6 7 8 |
| (4) | This Act does not affect a procedure required under another Act for disclosing the type of information being disclosed. | 9 10 |
| (5) | If a public interest disclosure is properly made to a proper authority, the proper authority is taken to have received the disclosure for the purposes of this Act. | 11 12 13 |

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| Part 3 | Specific public interest disclosures—corporate entities and GOCs | 14 15 16 |
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|-----------|---|----|
| 18 | Disclosure concerning corporate entity | 17 |
|-----------|---|----|

- | | | |
|-------|--|----------------------|
| (1) | This section applies if an employee of a corporate entity has information about— | 18 19 |
| (a) | the conduct of the corporate entity, or another employee of the corporate entity, that could, if proved, be— | 20 21 |
| (i) | maladministration that adversely affects a person's interests in a substantial and specific way; or | 22 23 |
| (ii) | a substantial misuse of public resources (other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure); or | 24 25 26 27 |
| (iii) | a substantial and specific danger to public health or safety; or | 28 29 |

-
- (iv) a substantial and specific danger to the environment; or 1
2
- (b) the conduct of another employee of the corporate entity, that could, if proved, be official misconduct; or 3
4
- (c) the conduct of another person that could, if proved, be a reprisal that relates to a previous disclosure made by the employee to the corporate entity or the Crime and Misconduct Commission. 5
6
7
8
- (2) The employee may make a disclosure in relation to the information to the corporate entity. 9
10
- (3) Also, if the information is about conduct mentioned in subsection (1)(b) or (c), the employee may make a disclosure of the information to the Crime and Misconduct Commission. 11
12
13
- (4) For subsection (1), an employee has information about the conduct of a person if— 14
15
- (a) the employee honestly believes on reasonable grounds that the information tends to show the conduct; or 16
17
- (b) the information tends to show the conduct, regardless of whether the employee honestly believes the information tends to show the conduct. 18
19
20
- (5) The employee may make a disclosure under this section in any way, including anonymously. 21
22
- (6) However, for a disclosure to a corporate entity, if the corporate entity has a reasonable procedure for making a public interest disclosure to the corporate entity, the employee must use the procedure. 23
24
25
26
- (7) This Act does not affect a procedure required under another Act for disclosing the type of information being disclosed. 27
28
- (8) If a public interest disclosure is properly made to a corporate entity, the corporate entity is taken to have received the disclosure for the purposes of this Act. 29
30
31
- (9) This section does not affect— 32

[s 19]

- (a) the making of a public interest disclosure by any person under section 12; or 1
2
- (b) the making of a complaint to the Crime and Misconduct Commission under the *Crime and Misconduct Act 2001*. 3
4
- (10) This section does not affect a referral under section 31— 5
 - (a) from a corporate entity to a public sector entity of a public interest disclosure made to the corporate entity under this section; or 6
7
8
 - (b) from a public sector entity to a corporate entity of a public interest disclosure made to the public sector entity under section 15. 9
10
11
- 19 Disclosure concerning GOC 12**
 - (1) This section applies if an employee of a GOC has information about— 13
14
 - (a) the conduct of another employee of the GOC, that could, if proved, be official misconduct; or 15
16
 - (b) the conduct of another person that could, if proved, be a reprisal that relates to a previous disclosure made by the employee to the GOC or the Crime and Misconduct Commission. 17
18
19
20
 - (2) The employee may make a disclosure in relation to the information to the GOC or the Crime and Misconduct Commission. 21
22
23
 - (3) For subsection (1), an employee has information about the conduct of a person if— 24
25
 - (a) the employee honestly believes on reasonable grounds that the information tends to show the conduct; or 26
27
 - (b) the information tends to show the conduct, regardless of whether the employee honestly believes the information tends to show the conduct. 28
29
30
 - (4) The employee may make a disclosure under this section in any way, including anonymously. 31
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[s 20]

- (i) decided not to investigate or deal with the disclosure; or 1
2
 - (ii) investigated the disclosure but did not recommend the taking of any action in relation to the disclosure; or 3
4
5
 - (iii) did not notify the person, within 6 months after the date the disclosure was made, whether or not the disclosure was to be investigated or dealt with. 6
7
8
- (2) The person may make a disclosure of substantially the same information that was the subject of the public interest disclosure mentioned in subsection (1)(a) to a journalist. 9
10
11
- (3) To remove any doubt, it is declared that— 12
 - (a) the disclosure of information to a journalist under this section is a public interest disclosure; and 13
14
 - (b) a journalist to whom information is disclosed under this section is not a relevant person for the purposes of section 64; and 15
16
17
 - (c) a journalist to whom information is disclosed under this section does not, for the purposes of section 65, gain the information because of the journalist's involvement in this Act's administration. 18
19
20
21
- (4) In this section— 22
 - journalist* means a person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media. 23
24
25

| | | |
|---------------|--|----------------------------------|
| Part 5 | Miscellaneous provisions | 1 |
| 21 | Conduct of unknown person | 2 |
| | A person may make a public interest disclosure whether or not the person is able to identify a particular person to whom the information disclosed relates. | 3 4 5 |
| 22 | Involuntary disclosure | 6 |
| | A person may make a public interest disclosure even though the person makes it under a legal requirement. | 7 8 |
| 23 | Disclosure in court or tribunal proceeding | 9 |
| (1) | The section applies if a person— | 10 |
| (a) | has information that the person may disclose as a public interest disclosure to a proper authority; and | 11 12 |
| (b) | discloses the information to a court or tribunal in a proceeding in which the information is relevant and admissible. | 13 14 15 |
| (2) | The disclosure is taken to be a public interest disclosure made to the court or tribunal as a proper authority under section 15(1)(a)(ii). | 16 17 18 |
| (3) | The court or tribunal may refer the disclosure to another proper authority. | 19 20 |
| (4) | Section 31(2) to (5) applies to a referral under subsection (3) as if the court or tribunal were a public sector entity. | 21 22 |
| (5) | The fact that a court or tribunal is treated as a public sector entity under this Act, and therefore can be a proper authority under section 15(1)(a)(ii) 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. | 23 24 25 26 27 28 |

[s 24]

| | | |
|------------------|---|--------------------|
| 24 | Past, present or future event | 1 |
| | A person may make a public interest disclosure about— | 2 |
| | (a) events that happened or may have happened, whether before or after the commencement of this Act; or | 3 4 |
| | (b) events that are or may be happening; or | 5 |
| | (c) events that will or may happen. | 6 |
| 25 | Number of disclosures not limited | 7 |
| | The fact that a person may make a public interest disclosure under a particular provision of this Act does not prevent the person from making the disclosure under another provision of this Act to the same or another proper authority. | 8 9 10 11 |
| Chapter 3 | Obligations of entities to whom disclosures may be made | 12 13 14 |
| Part 1 | Preliminary | 15 |
| 26 | Definition for ch 3 | 16 |
| | In this chapter— | 17 |
| | <i>public sector entity</i> includes— | 18 |
| | (a) a corporate entity; and | 19 |
| | (b) a GOC. | 20 |
| 27 | Purpose of chapter | 21 |
| | The purpose of this chapter is to state the obligations of— | 22 |

[s 29]

| | | |
|-----------|--|----------------|
| 29 | Record of disclosure | 1 |
| (1) | The chief executive officer of a public sector entity to which a public interest disclosure is made must keep a proper record of the disclosure, including— | 2 3 4 |
| (a) | the name of the person making the disclosure, if known; and | 5 6 |
| (b) | the information disclosed; and | 7 |
| (c) | any action taken on the disclosure; and | 8 |
| (d) | any other information required under a standard made under section 60. | 9 10 |
| (2) | The chief executive officer of a public sector entity to which a public interest disclosure is referred under section 31 or 34 must keep a proper record of the disclosure, including— | 11 12 13 |
| (a) | the name of the person making the disclosure, if known; and | 14 15 |
| (b) | the information disclosed; and | 16 |
| (c) | the name of the public sector entity, or member of the Legislative Assembly, that referred the disclosure; and | 17 18 |
| (d) | any action taken on the disclosure; and | 19 |
| (e) | any other information required under a standard made under section 60. | 20 21 |
| (3) | In this section— | 22 |
| | <i>public interest disclosure</i> includes a purported public interest disclosure. | 23 24 |
| | <i>public sector entity</i> does not include— | 25 |
| (a) | a court or tribunal; or | 26 |
| (b) | the Executive Council. | 27 |

-
- 30 When no action required** 1
- (1) A public sector entity may decide not to investigate or deal 2
with a public interest disclosure if— 3
- (a) the substance of the disclosure has already been 4
investigated or dealt with by another appropriate 5
process; or 6
- (b) the entity reasonably considers that the disclosure 7
should be dealt with by another appropriate process; or 8
- (c) the age of the information the subject of the disclosure 9
makes it impracticable to investigate; or 10
- (d) the entity reasonably considers that the disclosure is too 11
trivial to warrant investigation and that dealing with the 12
disclosure would substantially and unreasonably divert 13
the resources of the entity from their use by the entity in 14
the performance of its functions; or 15
- (e) another entity that has jurisdiction to investigate the 16
disclosure has notified the entity that investigation of the 17
disclosure is not warranted. 18
- (2) If an entity decides not to investigate or deal with a public 19
interest disclosure under subsection (1), the entity must give 20
written reasons for its decision to the person making the 21
disclosure. 22
- (3) A person who receives written reasons for a decision of an 23
entity under subsection (2) may apply to the chief executive of 24
the entity for a review of the decision within 28 days after 25
receiving the written reasons. 26
- 31 Referral of disclosure** 27
- (1) A public sector entity to which a public interest disclosure is 28
made under section 15, or referred under section 34, may refer 29
the disclosure to another public sector entity (the *referral* 30
entity) if the disclosure is about— 31
- (a) the conduct of the referral entity or a public officer of 32
the referral entity; or 33

[s 32]

- (b) the conduct of an entity (including itself), or another matter, that the referral entity has the power to investigate or remedy. 1
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- (2) The power of a public sector entity to investigate or remedy conduct that is the subject of a public interest disclosure is not limited by a referral of the disclosure under subsection (1). 4
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- (3) The public sector entity must not refer a public interest disclosure to another public sector entity if it considers there is an unacceptable risk that a reprisal would happen because of the referral. 7
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- (4) In considering whether there would be an unacceptable risk, the public sector entity must, if practicable, consult with the person who made the public interest disclosure. 11
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- (5) This section does not affect another law under which a public sector entity must refer a report, complaint, information or evidence to another entity. 14
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- 32 Person who made disclosure, or referring entity, to be informed** 17
18
- (1) A public sector entity to which a public interest disclosure is made under section 15, or referred under section 31 or 34, must give the person who made the disclosure, or the entity that referred the disclosure, reasonable information about the disclosure. 19
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23
- (2) For subsection (1), reasonable information about the disclosure includes at least the following— 24
25
- (a) confirmation that the disclosure was received by the public sector entity; 26
27
- (b) a description of the action proposed to be taken, or taken, by the public sector entity in relation to the disclosure; 28
29
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- (c) if action has been taken by the public sector entity in relation to the disclosure—a description of the results of the action. 31
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| (3) | The information must be given to the person or the entity in writing. | 1 2 |
| (4) | The public sector entity need not give information under subsection (1) if giving the information would be likely to adversely affect— | 3 4 5 |
| (a) | anybody’s safety; or | 6 |
| (b) | the investigation of an offence or possible offence; or | 7 |
| (c) | necessary confidentiality about an informant’s existence or identity. | 8 9 |
| (5) | If a person makes a public interest disclosure 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 the <i>Crime and Misconduct Act 2001</i> . | 10 11 12 13 14 |
| 33 | Disclosure information to be given to oversight agency | 15 |
| (1) | The oversight agency may make, under section 60, a standard that requires the chief executive officer of a public sector entity to give to the oversight agency all or any of the information mentioned in section 29. | 16 17 18 19 |
| (2) | The standard may provide for the way in which and the period within which the information is to be given. | 20 21 |
| Part 3 | Members of Legislative Assembly | 22 23 |
| 34 | Referral of disclosure | 24 |
| (1) | A member of the Legislative Assembly to whom a public interest disclosure is made under section 14 may refer the disclosure to another public sector entity (the <i>referral entity</i>) | 25 26 27 |

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| | if the member considers the referral entity has power to investigate or remedy the conduct or other matter that is the subject of the disclosure. | 1 2 3 |
| (2) | For the purposes of this Act, the member has no role in investigating the disclosure. | 4 5 |
| (3) | In this section— <i>public interest disclosure</i> includes a purported public interest disclosure. | 6 7 8 |
| 35 | Legislative Assembly may still deal with disclosure | 9 |
| (1) | This Act does not limit the immunities, powers, privileges or rights of the Legislative Assembly or its members or committees in relation to a public interest disclosure made to a member of the Legislative Assembly. | 10 11 12 13 |
| (2) | In this section— <i>committee</i> means a committee of the Legislative Assembly, whether or not a statutory committee. <i>public interest disclosure</i> includes a purported public interest disclosure. | 14 15 16 17 18 |
| Chapter 4 | Protection | 19 |
| Part 1 | General | 20 |
| 36 | Immunity from liability | 21 |
| | A person who makes a public interest disclosure is not subject to any civil or criminal liability or any liability arising by way of administrative process, including disciplinary action, for making the disclosure. | 22 23 24 25 |

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| 37 | Confidentiality provisions do not apply | 1 |
| | Without limiting section 36, a person who makes a public interest disclosure does not by doing so— | 2 3 |
| | (a) commit an offence under any Act that imposes a duty to maintain confidentiality in relation to a matter or any other restriction on the disclosure of information; or | 4 5 6 |
| | (b) breach an obligation by way of oath or rule of law or practice or under an agreement requiring the person to maintain confidentiality or otherwise restricting the disclosure of information in relation to a matter. | 7 8 9 10 |
| 38 | Protection from defamation action | 11 |
| | Without limiting section 36, in a proceeding for defamation, a person who makes a public interest disclosure has a defence of absolute privilege for publishing the information disclosed. | 12 13 14 |
| 39 | Liability for own conduct | 15 |
| | (1) A person's liability for the person's own conduct is not affected by the person's disclosure of that conduct under this Act. | 16 17 18 |
| | (2) In this section— | 19 |
| | <i>liability</i> includes civil or criminal liability or any liability arising by way of administrative process, including disciplinary action. | 20 21 22 |
| 40 | Reprisal and grounds for reprisal | 23 |
| | (1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that— | 24 25 |
| | (a) the other person or someone else has made, or intends to make, a public interest disclosure; or | 26 27 |

[s 41]

| | | |
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| (b) | the other person or someone else is, has been, or intends to be, involved in a proceeding under the Act against any person. | 1 2 3 |
| (2) | An attempt to cause detriment includes an attempt to induce a person to cause detriment. | 4 5 |
| (3) | A contravention of subsection (1) is a reprisal or the taking of a reprisal. | 6 7 |
| (4) | A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal. | 8 9 |
| (5) | For the contravention mentioned in subsection (3) 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. | 10 11 12 13 |
| 41 | Offence of taking reprisal | 14 |
| (1) | A person must not take a reprisal. Maximum penalty—167 penalty units or 2 years imprisonment. | 15 16 17 |
| (2) | An offence against subsection (1) is an indictable offence. | 18 |
| 42 | Damages entitlement for reprisal | 19 |
| (1) | A reprisal is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment as a result. | 20 21 |
| (2) | Any appropriate remedy that may be granted by a court for a tort, including exemplary damages, may be granted by a court for the taking of a reprisal. | 22 23 24 |
| (3) | If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury. | 25 26 27 |
| (4) | The right of a person to bring proceedings for damages under this section does not affect any other right or remedy available to the person arising from the reprisal. | 28 29 30 |

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- (5) Proceedings for damages may be brought under this section even if a prosecution in relation to the reprisal has not been brought, or can not be brought, under section 41. 1
2
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- (6) The *Workers' Compensation and Rehabilitation Act 2003* does not apply to proceedings for damages brought under this section. 4
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- 43 Vicarious liability of public sector entity 7**
- (1) If any of a public sector entity's employees contravenes section 40 in the course of employment, both the public sector entity and the employee, as the case may be, are jointly and severally civilly liable for the contravention, and a proceeding under section 42 may be taken against either or both. 8
9
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- (2) It is a defence to a proceeding against a public sector entity under section 42 if the public sector entity proves, on the balance of probabilities, that the public sector entity took reasonable steps to prevent the employee contravening section 40. 13
14
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- (3) In this section— 18
- public sector entity* includes— 19
- (a) a corporate entity; and 20
- (b) a GOC. 21
- 44 Complaint under the Anti-Discrimination Act 1991 22**
- (1) A person may make a complaint under the *Anti-Discrimination Act 1991* about a reprisal. 23
24
- (2) The complaint may be dealt with under the *Anti-Discrimination Act 1991*, chapters 6 and 7 as if the complaint were about an alleged contravention of the *Anti-Discrimination Act 1991*. 25
26
27
28
- (3) However— 29

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- (a) if a person commences proceedings in a court under section 42 in relation to a reprisal, the person can not subsequently make a complaint under the *Anti-Discrimination Act 1991* about the reprisal; and
- (b) if the person makes a complaint under the *Anti-Discrimination Act 1991* about a reprisal and the complaint is accepted under that Act, the person can not subsequently commence proceedings under section 42 in relation to the reprisal.
- (4) A complaint under the *Anti-Discrimination Act 1991* about a reprisal may be made even if a prosecution in relation to the reprisal has not been brought, or can not be brought, under section 41.
- 45 Reasonable management action not prevented**
- (1) Nothing in this part is intended to prevent a manager from taking reasonable management action in relation to an employee who has made a public interest disclosure.
- (2) However, a manager may take reasonable management action in relation to an employee who has made a public interest disclosure only if the manager's reasons for taking the action do not include the fact that the person has made the public interest disclosure.
- (3) In this section—
- manager*, of an employee, means a person to whom the employee reports or a person who directly or indirectly supervises the employee in the performance of the employee's functions as an employee.
- reasonable management action*, taken by a manager in relation to an employee, includes any of the following taken by the manager—
- (a) a reasonable appraisal of the employee's work performance;

-
- (b) a reasonable requirement that the employee undertake counselling; 1
2
 - (c) a reasonable suspension of the employee from the employment workplace; 3
4
 - (d) a reasonable disciplinary action; 5
 - (e) a reasonable action to transfer or deploy the employee; 6
 - (f) a reasonable action to end the employee's employment by way of redundancy or retrenchment; 7
8
 - (g) a reasonable action in relation to an action mentioned in paragraph (a) to (f); 9
10
 - (h) a reasonable action in relation to the employee's failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in relation to the employee's employment. 11
12
13
14

Part 2 Administrative actions 15

46 Right of appeal or review of public officer 16

- (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— 17
18
19
 - (a) disciplinary action taken against the public officer; 20
 - (b) the appointment or transfer of the public officer or another public officer to a position as a public officer; 21
22
 - (c) unfair treatment of the public officer. 23
- (2) Whether or not the Act specifies grounds for the appeal or review, the public officer may also appeal the action or apply to have the action set aside because it was the taking of a reprisal against the public officer. 24
25
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- (3) Subsection (2) applies even if the decision on the hearing of the appeal or review is in the form of a recommendation. 1
2
- (4) In this section— 3
 - public officer* includes— 4
 - (a) an employee of a corporate entity; and 5
 - (b) an employee of a GOC. 6

47 Relocation of public service employee 7

- (1) This section gives a public service employee a right to apply for relocation. 8
9
- (2) The application must be made on the ground that— 10
 - (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 11
12
13
 - (b) the only practical way to remove or substantially remove the danger of a reprisal is to relocate the employee. 14
15
- (3) The application may be made by the public service employee to the appeals officer of the Public Service Commission (the *appeals officer*). 16
17
18
- (4) For the purposes of the *Public Service Act 2008*— 19
 - (a) the application is taken to be an appeal against a decision not to relocate the employee; and 20
21
 - (b) the decision mentioned in paragraph (a) is taken to have been made by the chief executive of the employee's department on the day the employee makes the application under subsection (1). 22
23
24
25
- (5) If the appeals officer considers the ground is established, the appeals officer may direct that the employee be relocated within the employee's department or to another department. 26
27
28
- (6) The appeals officer can not direct that the employee be relocated without the agreement of— 29
30

-
- (a) the public service employee; and 1
 - (b) if the relocation is to another department—the other 2
department’s chief executive. 3
 - (7) For subsection (5), the appeals officer has power to do, or 4
authorise the doing of, anything necessary or convenient to 5
relocate the public service employee. 6
 - (8) In this section— 7
public service employee see the *Public Service Act 2008*, 8
schedule 4. 9

Part 3 Injunctions 10

48 Right to apply to industrial commission 11

- (1) An application for an injunction about a reprisal may be made 12
to the industrial commission if the reprisal— 13
 - (a) has caused or may cause detriment to an employee 14
within the meaning of the *Industrial Relations Act 1999*; 15
and 16
 - (b) involves or may involve a breach of the *Industrial 17
Relations Act 1999* or an industrial instrument under 18
that Act. 19
- (2) The application may be made by— 20
 - (a) the employee; or 21
 - (b) an industrial organisation— 22
 - (i) whose rules entitle it to represent the industrial 23
interests of the employee; and 24
 - (ii) acting in the employee’s interests with the 25
employee’s consent; or 26

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- (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 277 applies to the application, but this part 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 1999*.
- 49 Right to apply to Supreme Court**
- (1) This section applies only to a person who can not apply under section 48 to the industrial commission for an injunction about a reprisal.
 - (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 person is a public officer; and
 - (ii) the reprisal involves or may involve an act or omission that the Crime and Misconduct Commission may investigate.

| | | |
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| 50 | No right to apply for injunction if complaint made under the Anti-Discrimination Act 1991 | 1 2 |
| | Despite sections 48 and 49, a person may not apply for an injunction about a reprisal under either of those provisions if the person makes a complaint under the <i>Anti-Discrimination Act 1991</i> about the reprisal. | 3 4 5 6 |
| | <i>Note—</i> | 7 |
| | See the <i>Anti-Discrimination Act 1991</i> , section 144 (Applications for orders protecting complainant’s interests (before reference to tribunal)). | 8 9 |
| 51 | Grounds for injunction | 10 |
| | The industrial commission or Supreme Court may grant an injunction under this part, in terms it considers appropriate, if it is satisfied that a person has engaged, is engaging or is proposing to engage, in conduct amounting to— | 11 12 13 14 |
| | (a) a reprisal; or | 15 |
| | (b) attempting a reprisal; or | 16 |
| | (c) aiding, abetting, counselling or procuring a reprisal; or | 17 |
| | (d) inducing or attempting to induce, whether by threats, promises or otherwise, a reprisal; or | 18 19 |
| | (e) being in any way, directly or indirectly, knowingly concerned in, or party to, a reprisal. | 20 21 |
| 52 | Order may require stated action | 22 |
| | If the industrial commission or Supreme Court is satisfied that a person has engaged or is engaging in conduct mentioned in section 51, it may grant an injunction, under this part, requiring the person to take stated action to remedy any detriment caused by the conduct. | 23 24 25 26 27 |

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| 53 | Evidence | 1 |
| (1) | The industrial commission or Supreme Court may grant an injunction, under this part, restraining a person from engaging in conduct mentioned in section 51— | 2 3 4 |
| (a) | whether or not it considers that the person intends to engage again, or to continue to engage, in the conduct; or | 5 6 7 |
| (b) | whether or not the person has previously engaged in the conduct; or | 8 9 |
| (c) | whether or not there is an imminent danger of substantial damage to anyone if the person engages in the conduct. | 10 11 12 |
| (2) | The industrial commission or Supreme Court may grant an injunction, under this part, requiring a person to do something— | 13 14 15 |
| (a) | whether or not it considers that the person intends to fail again, or to continue to fail, to do the thing; or | 16 17 |
| (b) | whether or not the person has previously failed to do the thing; or | 18 19 |
| (c) | whether or not there is an imminent danger of substantial damage to anybody if the person fails to do the thing. | 20 21 22 |
| 54 | Interim injunction | 23 |
| | An interim injunction may be granted pending the final decision on an application for an injunction under this part. | 24 25 |
| 55 | Restrictions about application | 26 |
| (1) | For an application for an injunction under this part that is before it, the industrial commission or Supreme Court may direct that— | 27 28 29 |

| | | |
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| (a) | a report of the whole or part of the proceeding for the application must not be published; or | 1 2 |
| (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 stated condition. | 3 4 5 6 |
| (2) | The direction may be given if the industrial commission or Supreme Court considers that— | 7 8 |
| (a) | disclosure of the report, evidence or thing would not be in the public interest; or | 9 10 |
| (b) | persons other than parties to the application do not have a sufficient legitimate interest in being informed of the report, evidence or thing. | 11 12 13 |
| (3) | An application for an injunction under this part may be heard without notice to another person if the industrial commission or Supreme Court considers a hearing without notice to another person is necessary in the circumstances. | 14 15 16 17 |
| (4) | This section does not limit the power of the industrial commission or Supreme Court. | 18 19 |
| 56 | Undertaking as to damages and costs | 20 |
| | If the Crime and Misconduct Commission applies for an injunction under this part, no undertaking about damages or costs is to be required. | 21 22 23 |
| Chapter 5 | Oversight agency | 24 |
| 57 | Definition for ch 5 | 25 |
| | In this chapter— | 26 |
| | <i>public sector entity</i> — | 27 |

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| | | |
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| (a) | includes a corporate entity and a GOC; and | 1 |
| (b) | does not include a court or tribunal. | 2 |
| 58 | Who is the oversight agency | 3 |
| | The Public Service Commission is the <i>oversight agency</i> . | 4 |
| 59 | Main functions | 5 |
| | The oversight agency's main functions are to— | 6 |
| (a) | monitor the management of public interest disclosures, including, for example, by— | 7 8 |
| (i) | monitoring compliance with this Act; and | 9 |
| (ii) | collecting statistics about public interest disclosures; and | 10 11 |
| (iii) | monitoring trends in relation to public interest disclosures; and | 12 13 |
| (b) | review the way in which public sector entities deal with public interest disclosures generally, or particular public interest disclosures; and | 14 15 16 |
| (c) | perform an educational and advisory role, including, for example, by— | 17 18 |
| (i) | promoting the objects of this Act; | 19 |
| (ii) | providing advice about public interest disclosures; and | 20 21 |
| (iii) | providing, or co-ordinating the provision of, education and training programs about public interest disclosures. | 22 23 24 |
| 60 | Standards | 25 |
| (1) | The oversight agency may make standards about the way in which public sector entities are to deal with public interest disclosures. | 26 27 28 |

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- (2) Without limiting subsection (1), a standard may provide for procedures relating to—
- (a) the way in which public sector entities are to facilitate the making of public interest disclosures; and
 - (b) the way in which public sector entities are to perform their functions under this Act; and
 - (c) the protection of persons from reprisals taken by public sector entities or public officers; and
 - (d) the provision by public sector entities to the oversight agency of statistical information about public interest disclosures.
- (3) Before making a standard, the oversight agency must take reasonable steps to consult with the public sector entities to which the standard may apply.
- (4) For subsection (3), the consultation must take place with—
- (a) for a GOC—the GOC’s shareholding Ministers; or
 - (b) otherwise—the public sector entity’s chief executive.
- (5) A failure to consult under subsection (3) does not affect the validity of the standard.
- (6) A standard is binding on a public sector entity.
- (7) However, if the public sector entity is a GOC, the standard is binding on the GOC only if the GOC’s shareholding Ministers—
- (a) notified the GOC’s board, under the *Government Owned Corporations Act 1993*, section 114(1), that the standard was to apply to the GOC; and
 - (b) before giving the notification mentioned in paragraph (a), complied with the *Government Owned Corporations Act 1993*, section 114(3).
- (8) If a standard is not binding on a GOC because of the application of subsection (7), the shareholding Ministers of the GOC must notify the oversight agency, in writing, that the standard is not binding on the GOC.

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- (9) A standard may be amended or replaced by a later standard made under this section. 1
2
- (10) A standard may be made only by gazette notice. 3
- (11) As soon as practicable after the oversight agency makes a standard, the oversight agency must ensure the standard is published on the oversight agency's website. 4
5
6
- Editor's note—* 7
- At the commencement of this section, the oversight agency's website was at <www.psc.qld.gov.au>. 8
9
- (12) If a standard is inconsistent with an Act or subordinate legislation, the Act or subordinate legislation prevails to the extent of the inconsistency. 10
11
12
- 61 Annual report** 13
- (1) The oversight agency must, as soon as practicable after the end of each financial year, prepare a report on the operation of this Act during that year and give a copy of the report to the Minister. 14
15
16
17
- (2) A report under subsection (1) may include, in relation to the financial year to which it relates, information about the following— 18
19
20
- (a) the performance of the oversight agency's functions under this Act; 21
22
- (b) the performance by public sector entities of the requirements of this Act, including any requirements of standards made under section 60; 23
24
25
- (c) other matters prescribed under a regulation. 26
- (3) A report under subsection (1) must include statistical information about public interest disclosures. 27
28
- 62 Review of Act** 29
- (1) The oversight agency must carry out a review of the operation of this Act. 30
31

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- (2) The review must commence within 5 years after the commencement of this section. 1
2
- (3) The objects of the review include— 3
- (a) deciding whether the main objects of the Act remain 4
valid; and 5
- (b) deciding whether the Act is achieving its main objects; 6
and 7
- (c) deciding whether the provisions of the Act are 8
appropriate for achieving its main objects. 9
- (4) The oversight agency must give the Minister a report about 10
the outcome of the review. 11
- (5) The Minister must, as soon as practicable after receiving the 12
report, table the report in the Legislative Assembly. 13

**63 Application of chapter to Crime and Misconduct 14
Commission and ombudsman 15**

- (1) Nothing in this chapter— 16
- (a) gives the oversight agency the power to review or 17
monitor— 18
- (i) the way in which the Crime and Misconduct 19
Commission exercises its functions under the 20
Crime and Misconduct Act 2001; or 21
- (ii) the way in which the ombudsman exercises the 22
ombudsman’s functions under the *Ombudsman Act* 23
2001; or 24
- (b) requires the Crime and Misconduct Commission to 25
report to the oversight agency about the way in which 26
the Crime and Misconduct Commission exercises its 27
powers under the *Crime and Misconduct Act 2001*; or 28
- (c) requires the ombudsman to report to the oversight 29
agency about the way in which the ombudsman 30
exercises the ombudsman’s powers under the 31
Ombudsman Act 2001. 32

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- (2) Subsection (1) does not apply in relation to— 1
- (a) the functions of the Crime and Misconduct Commission 2
as a public sector entity in relation to a public interest 3
disclosure made to the commission by a public officer of 4
the commission, or a public interest disclosure referred 5
to the commission under section 31(1)(a); or 6
- (b) the functions of the ombudsman as a public sector entity 7
in relation to a public interest disclosure made to the 8
ombudsman by a public officer of the ombudsman, or a 9
public interest disclosure referred to the ombudsman 10
under section 31(1)(a). 11

Chapter 6 Miscellaneous 12

64 Protection from liability 13

- (1) A relevant person is not civilly liable to someone for an act 14
done, or omission made, honestly and without negligence 15
under this Act. 16
- (2) If subsection (1) prevents a civil liability attaching to a 17
person— 18
- (a) for a person who is a public officer of a local 19
government, corporate entity or an entity established 20
under local government authorisation—the liability 21
attaches instead to the local government; or 22
- (b) for a person who is a public officer of an entity, other 23
than an entity mentioned in paragraph (a), that does not 24
represent the State—the liability attaches instead to the 25
entity; or 26
- (c) otherwise—the liability attaches instead to the State. 27
- (3) In this section— 28
- relevant person* means a person who is responsible for 29
discharging a function, or part of a function, under this Act. 30

65 Preservation of confidentiality

- (1) If a person gains confidential information because of the person's involvement 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 person gains information because of the person's involvement in this Act's administration if the person gains the information because of being involved, or an opportunity given by being involved, in the administration.

Example—

If a person gains information because the person is a public officer who receives a public interest disclosure for a proper authority, the person gains the information because of the person's involvement in this Act's administration.

- (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 the person to whom the confidential information relates consents in writing to the making of the record or disclosure of the information; or
 - (e) if—
 - (i) the person can not reasonably obtain the consent of the person to whom the confidential information relates; and
 - (ii) making the record or disclosing the information is unlikely to harm the interests of the person to whom the confidential information relates and is reasonable in all the circumstances; or

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- (f) if the person reasonably believes that making the record
or disclosing the information is necessary to provide for
the safety or welfare of a person; or
- (g) if authorised under a regulation or another Act.
- (4) This section does not affect an obligation a person may have
under the principles of 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 principles of natural justice;
and
- (b) unlikely a reprisal will be taken against the person
because of the disclosure.
- (6) To remove any doubt, it is declared that if there is an
inconsistency between this section and section 10(1), this
section prevails.
- (7) In this section—
- confidential information***—
- (a) includes—
- (i) information about the identity, occupation,
residential or work address or whereabouts of a
person—
- (A) who makes a public interest disclosure; or
- (B) against whom a public interest disclosure has
been made; and
- (ii) information disclosed by a public interest
disclosure; and
- (iii) information about an individual’s personal affairs;
and
- (iv) information that, if disclosed, may cause detriment
to a person; and

(b) 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.

66 False or misleading information

(1) A person must not—

(a) make a statement to a proper authority 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 give information that is false or misleading in a material particular.

Maximum penalty—167 penalty units or 2 years imprisonment.

(2) An offence against subsection (1) is an indictable offence.

(3) In this section—

proper authority includes—

(a) a corporate entity; and

(b) a GOC.

67 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 any of the following—

• section 41 (Offence of taking reprisal)

• section 65 (Preservation of confidentiality)

• section 66 (False or misleading information).

[s 68]

- (2) To remove any 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*.
- 68 Proceedings for offences generally**
- An offence against this Act other than an offence declared to be an indictable offence is a summary offence.
- 69 Proceedings for indictable offences**
- (1) Subject to subsection (2), a proceeding on a charge for an indictable offence under this Act must be heard and decided summarily.
- (2) A Magistrates Court must abstain from dealing summarily with a charge for an indictable offence under this Act—
- (a) if satisfied, at any stage, and after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction; or
 - (b) if satisfied, on an application made by the defence, that because of exceptional circumstances the charge should not be heard and decided summarily.
- (3) If the court abstains from jurisdiction, the proceeding for the charge must be conducted as a committal proceeding.

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| 70 | Change to a committal proceeding during summary proceeding | 1 2 |
| (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. | 3 4 5 6 |
| (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. | 7 8 9 |
| (3) | The defendant's plea at the start of the hearing must be disregarded. | 10 11 |
| (4) | The evidence already heard by the court must be taken to be evidence in the committal proceeding. | 12 13 |
| (5) | To remove any doubt, it is declared that the <i>Justices Act 1886</i> , section 104 must be complied with for the committal proceeding. | 14 15 16 |
| | | |
| 71 | Regulation-making power | 17 |
| (1) | The Governor in Council may make regulations under this Act. | 18 19 |
| (2) | A regulation may provide that, for all or particular public interest disclosures— | 20 21 |
| (a) | a public sector entity is to be treated as a part of another public sector entity; or | 22 23 |
| (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 | 24 25 26 |
| (c) | public sector entities or parts of public sector entities are to be treated as a single public sector entity. | 27 28 |
| (3) | A regulation under subsection (2) may not— | 29 |
| (a) | apply to a public sector entity mentioned in section 6(1)(a) or (b); or | 30 31 |

[s 72]

| | | |
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| (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 | 1 2 3 |
| (c) | be inconsistent with a requirement under an Act that a public sector entity act independently. | 4 5 |
| (4) | In this section— | 6 |
| | <i>public sector entity</i> includes— | 7 |
| (a) | a corporate entity; and | 8 |
| (b) | a GOC. | 9 |
| Chapter 7 | Repeal | 10 |
| 72 | Repeal | 11 |
| | The Whistleblowers Protection Act 1994, No. 68 is repealed. | 12 |
| Chapter 8 | Transitional provisions for Public Interest Disclosure Act 2010 | 13 14 15 |
| 73 | Definitions for ch 8 | 16 |
| | In this chapter— | 17 |
| | <i>commencement</i> means the commencement of this section. | 18 |
| | <i>new Act</i> means the <i>Public Interest Disclosure Act 2010</i> . | 19 |
| | <i>repealed Act</i> means the <i>Whistleblowers Protection Act 1994</i> . | 20 |

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| 74 | Disclosures made under repealed Act | 1 |
| | A public interest disclosure made under the repealed Act before the commencement of this section is taken, from the commencement, to be a public interest disclosure under the new Act. | 2 3 4 5 |
| 75 | Vicarious liability of employers | 6 |
| | Proceedings under section 42 of the new Act may be taken against an employer of a person who causes detriment to another person in reprisal for a public interest disclosure only if the reprisal happens after the commencement. | 7 8 9 10 |
| 76 | Complaint under the Anti-Discrimination Act 1991 | 11 |
| | A complaint may be made under section 44(1) in relation to a reprisal only if the reprisal happens after the commencement. | 12 13 |
| 77 | Confidentiality of information | 14 |
| | (1) This section applies if a person gained confidential information because of the person's involvement as a public officer in the administration of the repealed Act. | 15 16 17 |
| | (2) The person is taken to have gained the information because of the person's involvement as a public officer in the new Act's administration. | 18 19 20 |
| | (3) The person may make a record of the confidential information, or disclose it to someone else, under section 65(3) of the new Act, even if the person gained the information before the commencement. | 21 22 23 24 |
| | (4) In this section— | 25 |
| | <i>public officer</i> includes a former member of the former misconduct tribunal established under the repealed <i>Misconduct Tribunals Act 1997</i> , section 11. | 26 27 28 |

[s 78]

Chapter 9 Amendment of legislation 1

78 Legislation amended in sch 3 2

Schedule 3 amends the legislation it mentions. 3

Schedule 1 Chief executive officers 1

section 8 2

| Public sector entities | Chief executive officers |
|---|---|
| Legislative Assembly committee | Speaker or chairperson of the committee |
| 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 |
| court or tribunal presided over by a magistrate or justice of the peace | Chief Magistrate |
| administrative office attached to a court or tribunal | proper officer of the court or tribunal or chief executive of the relevant department |
| Executive Council | officer appointed as clerk of Executive Council |
| department | department's chief executive |
| local government | mayor or chief executive officer |
| Crime and Misconduct Commission | chairperson of the commission |
| Office of the Ombudsman | ombudsman |

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| Schedule 2 | Offences or contraventions endangering the environment | 1 2 |
| | section 12(1)(b) and (c) | 3 |
| | Aboriginal Cultural Heritage Act 2003 | 4 |
| | • section 24(1) (Unlawful harm to Aboriginal cultural heritage) | 5 6 |
| | • section 25(1) (Prohibited excavation, relocation and taking away) | 7 8 |
| | • section 26(1) (Unlawful possession of Aboriginal cultural heritage) | 9 10 |
| | Environmental Protection Act 1994 | 11 |
| | • all provisions for which a contravention is an offence | 12 |
| | Fisheries Act 1994 | 13 |
| | • section 89 (Noxious fisheries resources not to be possessed, released etc.) | 14 15 |
| | • section 90 (Nonindigenous fisheries resources not to be possessed, released etc.) | 16 17 |
| | • section 91 (Aquaculture fisheries resources not to be released) | 18 19 |
| | • section 92 (Duty of person who takes or possesses noxious or nonindigenous fisheries resources) | 20 21 |
| | • section 122 (Protection of fisheries resources in declared fish habitat area) | 22 23 |
| | • section 123 (Protection of marine plants) | 24 |

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| Forestry Act 1959 | 1 |
| • section 53(1)(b) (Interference with forest products on Crown holdings and particular entitlements) | 2 3 |
| • section 54 (Interfering with forest products on Crown lands etc.) | 4 5 |
| | |
| Greenhouse Gas Storage Act 2009 | 6 |
| • all provisions for which a contravention is an offence | 7 |
| | |
| Land Act 1994 | 8 |
| • section 404 (No trespassing) | 9 |
| | |
| Mineral Resources Act 1989 | 10 |
| • section 194 (Conditions of mineral development licence) | 11 12 |
| • section 209 (Contravention by holder of mineral development licence) | 13 14 |
| • section 276 (General conditions of mining lease) | 15 |
| • section 308 (Contravention by holder of mining lease) | 16 |
| | |
| Nature Conservation Act 1992 | 17 |
| • section 88 (Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal) | 18 19 |
| • section 89(1) (Restriction on taking etc. particular protected plants) | 20 21 |
| • section 91 (Restriction on release etc. of international and prohibited wildlife) | 22 23 |
| • section 92 (Prohibition on breeding etc. hybrids of protected animals) | 24 25 |
| • section 93 (Aborigines' and Torres Strait Islanders' rights to take etc. protected wildlife) | 26 27 |

Schedule 2

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| • section 94 (Conservation officers prohibited in dealing with protected wildlife) | 1 2 |
| • section 97(2) (Restriction on taking etc. of native wildlife in areas of major interest and critical habitats) | 3 4 |
| • section 109 (Compliance with order) | 5 |
| Petroleum Act 1923 | 6 |
| • all provisions for which a contravention is an offence | 7 |
| Petroleum and Gas (Production and Safety) Act 2004 | 8 |
| • all provisions for which a contravention is an offence | 9 |
| Queensland Heritage Act 1992 | 10 |
| • section 104 (Offence to destroy protected area) | 11 |
| • section 155 (Contravention of stop order) | 12 |
| • section 169(2) (Restoration orders) | 13 |
| Torres Strait Islander Cultural Heritage Act 2003 | 14 |
| • section 24(1) (Unlawful harm to Torres Strait Islander cultural heritage) | 15 16 |
| • section 25(1) (Prohibited excavation, relocation and taking away) | 17 18 |
| • section 26(1) (Unlawful possession of Torres Strait Islander cultural heritage) | 19 20 |
| Transport Operations (Marine Pollution) Act 1995 | 21 |
| • all provisions for which a contravention is an offence | 22 |
| Water Act 2000 | 23 |
| • section 272(4) (Immediate suspension of permit in exceptional circumstances) | 24 25 |

- section 273(3) (Notice to owner of land to remove vegetation etc.) 1
2
- section 814 (Destroying vegetation, excavating or placing fill without permit) 3
4

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| Schedule 3 | Legislation amended | 1 |
| | section 78 | 2 |
| City of Brisbane Act 2010 | | 3 |
| 1 | Sections 180(13)(b) and 216(8), ‘Whistleblowers Protection Act 1994’— | 4 |
| | <i>omit, insert—</i> | 5 |
| | <i>‘Public Interest Disclosure Act 2010’.</i> | 6 |
| | | 7 |
| Coal Mining Safety and Health Act 1999 | | 8 |
| 1 | Section 275AA(6), ‘Whistleblowers Protection Act 1994, part 5, division 3’— | 9 |
| | <i>omit, insert—</i> | 10 |
| | <i>‘Public Interest Disclosure Act 2010, chapter 4, part 1 in relation to reprisals’.</i> | 11 |
| | | 12 |
| | | 13 |
| Corrective Services Act 2006 | | 14 |
| 1 | Section 273— | 15 |
| | <i>insert—</i> | 16 |
| | ‘(5) The <i>Public Interest Disclosure Act 2010</i> applies to an engaged service provider as if— | 17 |
| | (a) the provider were a public sector entity; and | 18 |
| | | 19 |

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| | (b) a person employed by the provider were a public officer; and | 1 2 |
| | (c) the chief executive of the provider were the chief executive officer of the provider.’ | 3 4 |
| Explosives Act 1999 | | 5 |
| 1 | Section 126A(6), ‘Whistleblowers Protection Act 1994, part 5, division 3’— | 6 7 |
| | <i>omit, insert—</i> | 8 |
| | <i>‘Public Interest Disclosure Act 2010, chapter 4, part 1 in relation to reprisals’.</i> | 9 10 |
| Industrial Relations Act 1999 | | 11 |
| 1 | Section 73(2)(f)(i), ‘Whistleblowers Protection Act 1994’— | 12 |
| | <i>omit, insert—</i> | 13 |
| | <i>‘Public Interest Disclosure Act 2010’.</i> | 14 |
| Information Privacy Act 2009 | | 15 |
| 1 | Schedule 1, section 4, heading, ‘Whistleblowers’— | 16 |
| | <i>omit, insert—</i> | 17 |
| | ‘Public interest disclosure’. | 18 |

| | | |
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| 2 | Schedule 1, section 4, ‘Whistleblowers Protection Act 1994’— | 1 |
| | <i>omit, insert—</i> | 2 |
| | <i>‘Public Interest Disclosure Act 2010’.</i> | 3 |
| | | 4 |
| | Local Government Act 2009 | 5 |
| 1 | Sections 177(13)(b) and 235(8), ‘Whistleblowers Protection Act 1994’— | 6 |
| | <i>omit, insert—</i> | 7 |
| | <i>‘Public Interest Disclosure Act 2010’.</i> | 8 |
| | | 9 |
| | Mining and Quarrying Safety and Health Act 1999 | 10 |
| 1 | Section 254A(6), ‘Whistleblowers Protection Act 1994, part 5, division 3’— | 11 |
| | <i>omit, insert—</i> | 12 |
| | <i>‘Public Interest Disclosure Act 2010, chapter 4, part 1 in relation to reprisals’.</i> | 13 |
| | | 14 |
| | | 15 |
| | Petroleum and Gas (Production and Safety) Act 2004 | 16 |
| 1 | Section 708C(6), ‘Whistleblowers Protection Act 1994, part 5, division 3’— | 17 |
| | <i>omit, insert—</i> | 18 |
| | <i>‘Public Interest Disclosure Act 2010, chapter 4, part 1 in relation to reprisals’.</i> | 19 |
| | | 20 |
| | | 21 |

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|---|----------------------|
| Public Sector Ethics Act 1994 | 1 |
| 1 Schedule, definition <i>maladministration</i>, ‘Whistleblowers Protection Act 1994’— | 2 3 |
| <i>omit, insert—</i> | 4 |
| ‘ <i>Public Interest Disclosure Act 2010</i> ’. | 5 |
| | |
| Public Service Act 2008 | 6 |
| 1 Chapter 9— | 7 |
| <i>insert—</i> | 8 |
| ‘Part 6 | 9 |
| Transitional provision for | 10 |
| Public Interest Disclosure Act | 11 |
| 2010 | |
| | |
| ‘264 Amendment of regulation by Public Interest Disclosure Act 2010 does not affect powers of Governor in Council | 12 13 |
| ‘The amendment of the <i>Public Service Regulation 2008</i> by the <i>Public Interest Disclosure Act 2010</i> does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’. | 14 15 16 17 |
| | |
| Public Service Regulation 2008 | 18 |
| | |
| 1 Section 10(2)(c), ‘Whistleblowers Protection Act document’— | 19 20 |
| <i>omit, insert—</i> | 21 |
| ‘Public Interest Disclosure Act document’. | 22 |

Schedule 3

| | | |
|----------|---|----|
| 2 | Section 10(3), definition <i>Whistleblowers Protection Act document</i>, ‘<i>Whistleblowers Protection Act document</i>’— | 1 |
| | <i>omit, insert—</i> | 2 |
| | <i>‘Public Interest Disclosure Act document’.</i> | 3 |
| | | 4 |
| 3 | Section 10(3), definition <i>Public Interest Disclosure Act document</i>, as amended, ‘<i>Whistleblowers Protection Act 1994</i>’— | 5 |
| | <i>omit, insert—</i> | 6 |
| | <i>‘Public Interest Disclosure Act 2010’.</i> | 7 |
| | | 8 |
| | | 9 |
| | Right to Information Act 2009 | 10 |
| 1 | Schedule 3, section 12(1), ‘<i>Whistleblowers Protection Act 1994</i>, section 55(1)’— | 11 |
| | <i>omit, insert—</i> | 12 |
| | <i>‘Public Interest Disclosure Act 2010, section 65(1)’.</i> | 13 |
| | | 14 |
| | Transport Operations (Marine Pollution) Act 1995 | 15 |
| 1 | Section 128B, ‘<i>Whistleblowers Protection Act 1994</i>’— | 16 |
| | <i>omit, insert—</i> | 17 |
| | <i>‘Public Interest Disclosure Act 2010’.</i> | 18 |

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| | Transport Operations (Marine Safety) Act 1994 | 1 |
| 1 | Section 202O, ‘Whistleblowers Protection Act 1994’— | 2 |
| | <i>omit, insert—</i> | 3 |
| | <i>‘Public Interest Disclosure Act 2010’.</i> | 4 |
| | | |
| | Workers’ Compensation and Rehabilitation Act 2003 | 5 |
| 1 | Section 379(d), ‘Whistleblowers Protection Act 1994’— | 6 |
| | <i>omit, insert—</i> | 7 |
| | <i>‘Public Interest Disclosure Act 2010’.</i> | 8 |

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| Schedule 4 | Dictionary | 1 |
| | section 4 | 2 |
| | <i>administrative action</i> — | 3 |
| (a) | means any action about a matter of administration, including, for example— | 4 5 |
| | (i) a decision and an act; and | 6 |
| | (ii) a failure to make a decision or do an act, including a failure to provide a written statement of reasons for a decision; and | 7 8 9 |
| | (iii) the formulation of a proposal or intention; and | 10 |
| | (iv) the making of a recommendation, including a recommendation made to a Minister; and | 11 12 |
| | (v) an action taken because of a recommendation made to a Minister; and | 13 14 |
| (b) | does not include an operational action of a police officer or of an officer of the Crime and Misconduct Commission. | 15 16 17 |
| | <i>agricultural college</i> means the agricultural college established under the <i>Agricultural College Act 2005</i> , section 36(1). | 18 19 20 |
| | <i>annual report</i> of a department means the annual report of the department required to be prepared and tabled in the Legislative Assembly under the <i>Financial Accountability Act 2009</i> . | 21 22 23 24 |
| | <i>chief executive officer</i> , of a public sector entity, see section 8. | 25 |
| | <i>chief judicial officer</i> means a judicial officer who is treated under this Act as a chief executive officer of a court or tribunal. | 26 27 28 |
| | <i>commission of inquiry</i> means a commission of inquiry under the <i>Commissions of Inquiry Act 1950</i> and includes an inquiry under a commission mentioned in section 4(2) of that Act. | 29 30 31 |

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- corporate entity** see the *Local Government Act 2009* and the *City of Brisbane Act 2010*. 1
2
- detriment** includes— 3
- (a) personal injury or prejudice to safety; and 4
 - (b) property damage or loss; and 5
 - (c) intimidation or harassment; and 6
 - (d) adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; and 7
8
9
 - (e) financial loss; and 10
 - (f) damage to reputation, including, for example, personal, professional or business reputation. 11
12
- disability** see the *Disability Services Act 2006*. 13
- employee**, of an entity, includes a person engaged by the entity under a contract of service. 14
15
- environment** see the *Environmental Protection Act 1994*. 16
- GOC**— 17
- (a) means a GOC and a prescribed GOC subsidiary under the *Government Owned Corporations Act 1993*; and 18
19
 - (b) does not include a GOC or a prescribed GOC subsidiary that is a declared entity under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* in relation to those parts of the entity's businesses, assets and liabilities that are being disposed of in a declared project under that Act. 20
21
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25
- investigate** includes take evidence. 26
- judicial officer** includes a registrar or deputy registrar of a court or tribunal performing delegated judicial tasks. 27
28
- maladministration** is administrative action that— 29
- (a) was taken contrary to law; or 30
 - (b) was unreasonable, unjust, oppressive, or improperly discriminatory; or 31
32
-

Schedule 4

- (c) was in accordance with a rule of law or a provision of an Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory in the particular circumstances; or
 - (d) was taken—
 - (i) for an improper purpose; or
 - (ii) on irrelevant grounds; or
 - (iii) having regard to irrelevant considerations; or
 - (e) was an action for which reasons should have been given, but were not given; or
 - (f) was based wholly or partly on a mistake of law or fact; or
 - (g) was wrong.
- official misconduct*** see the *Crime and Misconduct Act 2001*.
- oversight agency*** see section 58.
- proper authority*** see section 5.
- 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
 - (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 including, for example, public moneys within the meaning of the *Financial Accountability Act 2009*.
- public health or safety*** includes the health or safety of persons—
- (a) under lawful care or control; or

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| <i>Examples for paragraph (a)—</i> | 1 |
| 1 students under the care or control of a teacher | 2 |
| 2 patients under the care or control of a doctor, nurse or other health professional | 3 |
| 3 prisoners under the care or control of a corrective services officer | 4 |
| (b) using community facilities or services provided by the public or private sector; or | 5 |
| (c) in employment workplaces. | 6 |
| <i>public interest disclosure</i> see section 11. | 7 |
| <i>public officer</i> see section 7. | 8 |
| <i>public sector entity</i> see section 6. | 9 |
| <i>Public Service Commission</i> means the Public Service Commission established under the <i>Public Service Act 2008</i> , section 43. | 10 |
| <i>relevant department</i> , 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. | 11 |
| <i>reprisal</i> see section 40. | 12 |
| <i>school council</i> means a school council established for a State school under the <i>Education (General Provisions) Act 2006</i> , section 79. | 13 |
| <i>shareholding Ministers</i> , of a GOC, see the <i>Government Owned Corporations Act 1993</i> , section 78. | 14 |
| <i>State educational institution</i> see the <i>Education (General Provisions) Act 2006</i> . | 15 |
| <i>statutory TAFE institute</i> see the <i>Vocational Education, Training and Employment Act 2000</i> . | 16 |
| <i>TAFE institute</i> see the <i>Vocational Education, Training and Employment Act 2000</i> . | 17 |
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| <i>tribunal</i> means— | 1 |
| (a) QCAT or another tribunal that is constituted by a person acting judicially; or | 2 3 |
| (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 | 4 5 6 7 |
| (c) a commission of inquiry. | 8 |
| <i>university</i> means a higher education institution established or recognised as a university under an Act. | 9 10 |
| <i>university college</i> means a higher education institution established or recognised as a university college under an Act. | 11 12 |