

2002

The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

**Public Interest Disclosure (Protection of  
Whistleblowers) Bill 2002**

**No.     , 2002**

*(Senator Murray)*

**A Bill for an Act to encourage the disclosure of  
conduct adverse to the public interest in the public  
sector, and for related purposes**



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# Contents

<b>Part 1—Preliminary</b>	1
1 Short title .....	1
2 Commencement .....	2
3 Objects of this Act .....	2
4 Interpretation .....	2
5 Meaning of disclosable conduct.....	4
6 Meaning of prescribed authority.....	6
7 Disclosures during proceedings .....	7
8 Other protection preserved.....	7
9 Liability of agent of the Crown.....	7
10 Legal professional privilege.....	7
<b>Part 2—Proper authorities</b>	8
11 Meaning of <i>proper authority</i> .....	8
12 Procedures .....	8
13 Report on disclosures.....	9
<b>Part 3—Public interest disclosures</b>	11
14 Making a public interest disclosure .....	11
15 Anonymous disclosures .....	11
16 Frivolous etc. disclosures.....	12
17 Referral without investigation .....	12
18 Investigation by proper authority.....	12
19 Non-investigation by proper authority.....	13
20 Referral with investigation.....	13
21 No referral.....	14
22 Action by proper authority.....	14
23 Progress report .....	15
24 Joint action.....	16
<b>Part 4—Unlawful reprisals</b>	18
<b>Division 1—Unlawful reprisals—general</b>	18
25 Agency must protect its officers against reprisals .....	18
26 Offence .....	18
27 Function to assist complainant.....	18
28 Relocation powers .....	18
29 Consent to relocation .....	19
<b>Division 2—Civil claims</b>	20
30 Liability in damages .....	20
31 Application for injunction or order .....	20

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32	Injunction or order to take action.....	20
33	Undertakings as to damages and costs.....	21
<b>Part 5—Miscellaneous</b>		22
34	Confidentiality .....	22
35	False or misleading information .....	22
36	Limitation of liability.....	23
37	Liability of person disclosing .....	23
38	Regulations .....	24

1     **A Bill for an Act to encourage the disclosure of**  
2     **conduct adverse to the public interest in the public**  
3     **sector, and for related purposes**

4     The Parliament of Australia enacts:

5     **Part 1—Preliminary**  
6

7     **1 Short title**

8                     This Act may be cited as the *Public Interest Disclosure (Protection*  
9                     *of Whistleblowers) Act 2002*.

Section 2

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1     **2 Commencement**

- 2             (1) Section 1 and this section commence on the day on which this Act  
3                 receives the Royal Assent.
- 4             (2) The remaining provisions commence on a day, or days, to be fixed  
5                 by Proclamation.
- 6             (3) If a provision referred to in subsection (2) has not commenced  
7                 before the end of the period of 6 months commencing on the day  
8                 on which this Act receives the Royal Assent, that provision, by  
9                 force of this subsection, commences on the first day after the end  
10                of that period.

11     **3 Objects of this Act**

- 12             The objects of this Act are to:
- 13               (a) support the principle of public interest disclosure and  
14                 safeguard the rights, including employment rights, of persons  
15                 who make public interest disclosures;
- 16               (b) provide a framework within which public interest disclosures  
17                 will be independently and rigorously dealt with;
- 18               (c) provide a framework within which persons who make a  
19                 public interest disclosure will be protected.

20     **4 Interpretation**

- 21             (1) In this Act, unless the contrary intention appears:
- 22               **act** includes investigate.
- 23               **agency** has the same meaning as in the *Financial Management*  
24                 *and Accountability Act 1997*.
- 25               **conduct** includes an act or omission.
- 26               **detriment** means:
- 27                 (a) injury, damage or loss; or  
28                 (b) intimidation or harassment; or

1 (c) discrimination, disadvantage or adverse treatment in relation  
2 to career, profession, employment, trade or business.

3 **disclosable conduct** has the meaning given by section 5.

4 **employee** includes a person who is an employee within the  
5 meaning of the *Public Service Act 1999* or the *Parliamentary*  
6 *Service Act 1999*.

7 **Executive Agency** means an Executive Agency within the meaning  
8 of the *Public Service Act 1999*.

9 **GBE** or **Government Business Enterprise** has the same meaning  
10 as in the *Commonwealth Authorities and Companies Act 1997*.

11 **government agency** means:

- 12 (a) a Department of State, excluding an Executive Agency or a  
13 Statutory agency; or  
14 (b) an Executive Agency; or  
15 (c) a Statutory Agency.

16 **offence** means an offence under an Act.

17 **parliamentary agency** means a Department of the Parliament that  
18 is established under the *Parliamentary Service Act 1999*.

19 **prescribed authority** has the meaning given by section 6.

20 **proper authority** has the meaning given by section 11.

21 **public interest disclosure** means a disclosure of information that  
22 the person making the disclosure believes on reasonable grounds  
23 tends to show:

- 24 (a) that another person has engaged, is engaging, or proposes to  
25 engage, in disclosable conduct; or  
26 (b) public wastage; or  
27 (c) conduct involving substantial risk to the environment; or  
28 (d) that a person has engaged, is engaging, or proposes to  
29 engage, in an unlawful reprisal; or

Section 5

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- 1 (e) that a public official has engaged, is engaging, or proposes to  
2 engage, in conduct that amounts to a substantial and specific  
3 danger to the health or safety of the public;  
4 and includes an anonymous disclosure.

5 ***public official*** means:

- 6 (a) an employee of an agency, including an agency head;  
7 (b) a person employed by or on behalf of an agency or in the  
8 service of a prescribed authority, whether under a contract of  
9 service or a contract for services, including a person who has  
10 ceased to perform those services; or  
11 (c) a person otherwise authorised to perform functions on behalf  
12 of an agency or a prescribed authority.

13 ***public wastage*** means conduct by a public official that amounts to  
14 negligent, incompetent or inefficient management within, or of, an  
15 agency resulting, or likely to result, directly or indirectly, in a  
16 substantial waste of public funds, other than conduct necessary to  
17 give effect to a law of the Commonwealth.

18 ***Statutory Agency*** means a Statutory Agency within the meaning of  
19 the *Public Service Act 1999*.

20 ***unlawful reprisal*** means conduct that causes, or threatens to cause,  
21 detriment:

- 22 (a) to a person directly because a person has made, or may  
23 make, a public interest disclosure; or  
24 (b) to a public official directly because he or she has resisted  
25 attempts by another public official to involve him or her in  
26 the commission of an offence.

27 **5 Meaning of *disclosable conduct***

- 28 (1) For the purposes of this Act, conduct is to be taken to be  
29 disclosable if:  
30 (a) it is of a type referred to in subsection (2); and  
31 (b) it would, if proven, constitute:  
32 (i) a criminal offence; or  
33 (ii) a disciplinary offence; or



- 1 (iii) reasonable grounds for dismissing or dispensing with, or  
2 otherwise terminating, the services of a public official  
3 who is engaged in it.
- 4 (2) For the purposes of paragraph (1)(a), the following types of  
5 conduct are disclosable:
- 6 (a) conduct of a person (whether or not a public official) that  
7 adversely affects, or could adversely affect, either directly or  
8 indirectly, the honest or impartial performance of official  
9 functions by a public official or agency;
- 10 (b) conduct of a public official which amounts to the  
11 performance of any of his or her official functions  
12 dishonestly or with partiality;
- 13 (c) conduct of a public official, a former public official or an  
14 agency that amounts to a breach of public trust;
- 15 (d) conduct of a public official, a former public official or an  
16 agency that amounts to the misuse of information or material  
17 acquired in the course of the performance of official  
18 functions (whether for the benefit of that person or agency or  
19 otherwise);
- 20 (e) conduct of a public official of a kind that amounts to  
21 maladministration which is action or inaction of a serious  
22 nature that is:
- 23 (i) contrary to law; or  
24 (ii) unreasonable, unjust, oppressive or improperly  
25 discriminatory; or  
26 (iii) based wholly or partly on improper motives;
- 27 (f) a conspiracy or attempt to engage in conduct referred to in  
28 paragraphs (a) to (e) (inclusive).
- 29 (3) In this section:
- 30 ***disciplinary offence*** means conduct that constitutes grounds for  
31 disciplinary action under the *Public Service Act 1999* or the  
32 *Parliamentary Service Act 1999*.

Section

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1 **6 Meaning of *prescribed authority***

2 (1) A prescribed authority includes a Commonwealth authority which  
3 is either of the following kinds of body that holds money on its  
4 own account:

5 (a) a body corporate that is incorporated for a public purpose by  
6 an Act;

7 (b) a body corporate that is incorporated for a public purpose by:

8 (i) regulations under an Act; or

9 (ii) an Ordinance of an external Territory (other than  
10 Norfolk Island) or regulations under such an Ordinance;

11 and is prescribed for the purposes of this paragraph by regulations  
12 under this Act.

13 (2) For the purposes of subsection (1), none of the following is a  
14 Commonwealth authority:

15 (a) a Corporations Act company;

16 (b) an Aboriginal association incorporated under Part IV of the  
17 *Aboriginal Councils and Associations Act 1976*;

18 (c) an association of employees that is an organisation within the  
19 meaning of the *Workplace Relations Act 1996*.

20 (3) For the purposes of subsection (1), all money that a body holds is  
21 taken to be held by it on its own account, unless the money is  
22 public money as defined in section 5 of the *Financial Management  
23 and Accountability Act 1997*.

24 (4) A prescribed authority also includes a Commonwealth company  
25 which is a Corporations Act company in which the Commonwealth  
26 has a controlling interest. However, it does not include a company  
27 in which the Commonwealth has a controlling interest through one  
28 or more interposed Commonwealth authorities or Commonwealth  
29 companies.

30 (5) A prescribed authority also includes a wholly-owned  
31 Commonwealth company which is any Commonwealth company  
32 other than a company any of the shares in which are beneficially  
33 owned by a person other than the Commonwealth.

1     **7 Disclosures during proceedings**

2                     If information that could amount to a public interest disclosure is  
3                     disclosed in the course of the proceedings of a court or tribunal, the  
4                     court or tribunal may refer the information to a proper authority.

5     **8 Other protection preserved**

6                     This Act does not limit the protection given by any other Act or  
7                     law to a person who makes a public interest disclosure or prejudice  
8                     any other remedy available to the person.

9     **9 Liability of agent of the Crown**

10                    An agent of the Commonwealth who commits an offence against  
11                    this Act is liable for a penalty for the offence.

12    **10 Legal professional privilege**

13                    Nothing in this Act is to be taken to entitle a person to disclose  
14                    information which would otherwise be the subject of legal  
15                    professional privilege.

Section 11

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2 **Part 2—Proper authorities**

3 **11 Meaning of *proper authority***

4 (1) Each of the following is a proper authority to receive a public  
5 interest disclosure concerning a government agency's conduct or  
6 the conduct of a public official in relation to the agency, or a public  
7 interest disclosure that a person has engaged, is engaging, or  
8 proposes to engage, in an unlawful reprisal:

- 9 (a) the agency head;  
10 (b) the Public Service Commissioner;  
11 (c) the Public Service Merit Protection Commissioner;  
12 (d) the Commonwealth Ombudsman.

13 (2) Each of the following is a proper authority to receive a public  
14 interest disclosure concerning a parliamentary agency's conduct or  
15 the conduct of a public official in relation to the parliamentary  
16 agency, or a public interest disclosure that a person has engaged, is  
17 engaging, or proposes to engage, in an unlawful reprisal:

- 18 (a) a Clerk or a Secretary of a parliamentary agency;  
19 (b) the Parliamentary Service Commissioner;  
20 (c) the Parliamentary Service Merit Protection Commissioner;  
21 (d) the Commonwealth Ombudsman.

22 **12 Procedures**

- 23 (1) An agency must establish procedures:  
24 (a) to facilitate the making of public interest disclosures; and  
25 (b) to deal with public interest disclosures that it is the proper  
26 authority to receive;  
27 as soon as practicable, and in any event, within 12 months after:  
28 (c) the commencement of this section; or  
29 (d) the agency comes into existence;  
30 whichever is later.

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**Section 13**

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- 1 (2) An agency must ensure that procedures established under  
2 subsection (1) are maintained.
- 3 (3) The procedures to be established under subsection (1) must include  
4 procedures dealing with the following:  
5 (a) making public interest disclosures;  
6 (b) assisting and providing information to a person who is  
7 considering making or who makes a public interest  
8 disclosure;  
9 (c) protecting a person who makes a public interest disclosure  
10 from unlawful reprisals, including unlawful reprisals taken  
11 by public officials in relation to the agency;  
12 (d) acting on public interest disclosures.
- 13 (4) The agency must, in respect of a document setting out the  
14 procedures established and maintained in accordance with this  
15 section:  
16 (a) make a copy of the document available to its public officials;  
17 and  
18 (b) make a copy of the document available to the public for  
19 inspection at all reasonable times; and  
20 (c) supply to a person a copy of the document on payment of an  
21 amount directed by the agency to be paid in relation to  
22 supply of such a copy (being an amount that the agency has  
23 determined, on reasonable grounds, to be equal to the costs  
24 that will be incurred by the agency in providing such a copy).

**13 Report on disclosures**

- 25
- 26 (1) An agency that is required by an Act to prepare an annual report of  
27 its activities during a year for tabling before the Parliament must  
28 include in the report:  
29 (a) a description of the procedures maintained by it under  
30 section 12 during the year; and  
31 (b) statistics relating to the year in accordance with  
32 subsection (2); and  
33 (c) particulars relating to the year in accordance with  
34 subsection (3).

Section 13

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- 1                   (2) The statistics to be included in the annual report are:
- 2                   (a) the number of public interest disclosures received by the
- 3                   agency; and
- 4                   (b) the number of each type of public interest disclosure received
- 5                   by the agency; and
- 6                   (c) the number of public interest disclosures received by the
- 7                   agency that were referred to it by other agencies; and
- 8                   (d) the number of public interest disclosures investigated by the
- 9                   agency; and
- 10                  (e) where the agency has referred public interest disclosures to
- 11                  other agencies for investigation:
- 12                   (i) the total number of disclosures referred; and
- 13                   (ii) the identity of each other agency to which a disclosure
- 14                   was referred; and
- 15                   (iii) the number of disclosures referred to each other agency;
- 16                   and
- 17                   (iv) the number of each type of public interest disclosure
- 18                   referred to each other agency; and
- 19                  (f) the number of public interest disclosures on which the
- 20                  agency declined to act under section 20; and
- 21                  (g) the number of public interest disclosures that were
- 22                  substantiated by the agency's investigation of the disclosure.
- 23                  (3) The annual report must include particulars of remedial action taken
- 24                  by the agency in relation to:
- 25                   (a) each public interest disclosure that was substantiated on
- 26                   investigation by the agency; and
- 27                   (b) any recommendations of the Public Service Commissioner or
- 28                   the Parliamentary Service Commissioner, as the case may be,
- 29                   that relate to the agency.

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## **Part 3—Public interest disclosures**

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### **14 Making a public interest disclosure**

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(1) Any person may make a public interest disclosure to a proper authority.

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(2) Without limiting the generality of subsection (1), a person may make a public interest disclosure:

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(a) about conduct in which a person engaged, or about matters arising, before the commencement of this Act; and

10

11

(b) whether or not the person is able to identify any person that the information disclosed concerns.

12

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### **15 Anonymous disclosures**

14

(1) A person may make an anonymous disclosure in accordance with this section and such a disclosure is protected by this Act.

15

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(2) An anonymous disclosure may only be made to a proper authority specified in paragraph 11(1)(b), (c) or (d) or 11(2)(b), (c) or (d), where the disclosure does not relate to the proper authority to whom the disclosure is made.

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(3) A person making an anonymous disclosure must identify themselves to the head of a proper authority specified in paragraph (11)(1)(b), (c) or (d) or 11(2)(b), (c) or (d) and request that his or her identity be kept confidential by the proper authority.

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(4) The head of the proper authority must personally consider an anonymous disclosure and make a preliminary assessment of the disclosure against the matters mentioned in section 16 before referring the matter without any identification of the person making the disclosure to staff of the proper authority for further and full investigation.

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(5) The proper authority must maintain confidentiality when examining a matter referred in accordance with this section.

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Section 16

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- 1 (6) An anonymous disclosure is subject to the tests set out in  
2 section 16.

3 **16 Frivolous etc. disclosures**

- 4 (1) A proper authority may decline to act on a public interest  
5 disclosure received by it if it consider that:  
6 (a) the disclosure is frivolous or vexatious; or  
7 (b) the disclosure is misconceived or lacking in substance; or  
8 (c) the disclosure is trivial; or  
9 (d) there is a more appropriate method of dealing with the  
10 disclosure reasonably available; or  
11 (e) the disclosure has already been dealt with adequately.
- 12 (2) If an issue raised in a public interest disclosure has been  
13 determined by a court or tribunal authorised to determine the issue  
14 at law after consideration of the matters raised by the disclosure,  
15 the proper authority shall decline to act on the disclosure to the  
16 extent that the disclosure attempts to reopen the issue.

17 **17 Referral without investigation**

- 18 Subject to section 20, if a public interest disclosure received by a  
19 proper authority is not related to:  
20 (a) the conduct of the authority or of a public official in relation  
21 to the authority; or  
22 (b) a matter, or the conduct of any person, that it has a function  
23 or power to investigate;  
24 the proper authority must refer the disclosure to an agency that,  
25 because it has a function or power to deal with the conduct or  
26 matter the disclosure concerns, is a proper authority to receive the  
27 disclosure.

28 **18 Investigation by proper authority**

- 29 (1) A proper authority shall investigate a public interest disclosure  
30 received by it if the disclosure relates to:



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**Section 20**

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- 1 (a) its own conduct or conduct of a public official in relation to  
2 the authority; or
- 3 (b) a matter, or the conduct of any person, that the authority has  
4 a function or power to investigate; or
- 5 (c) the conduct of a person, other than a public official,  
6 performing services for or on behalf of the authority.
- 7 (2) Where a proper authority investigates a matter in accordance with  
8 subsection (1) and is unable to investigate the matter impartially or  
9 without a conflict of interest, the matter must be referred to another  
10 proper authority.
- 11 (3) In all cases, where a proper authority is investigating a public  
12 interest disclosure in relation to its own conduct, it must notify the  
13 Commonwealth Ombudsman of the fact within 2 weeks of the  
14 disclosure.

**19 Non-investigation by proper authority**

- 15
- 16 (1) Where a proper authority decides not to investigate a public  
17 interest disclosure received by it, the proper authority must refer  
18 the matter to either the Commonwealth Ombudsman or the  
19 Auditor-General seeking their approval to not investigate the  
20 disclosure.
- 21 (2) Where action of the kind mentioned in subsection (1) occurs,  
22 subsection 21(2) of this Act applies.

**20 Referral with investigation**

- 23
- 24 (1) Subject to subsection (2), if a public interest disclosure being  
25 investigated by a proper authority relates to:
- 26 (a) the conduct of another agency or the conduct of a public  
27 official in relation to another agency; or
- 28 (b) a matter, or the conduct of any person, that another agency  
29 has a function or power to investigate;
- 30 the proper authority may refer the public interest disclosure to the  
31 other agency.

Section 21

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1 (2) Nothing in this section affects the duty of a proper authority to act  
2 under section 18.

3 **21 No referral**

4 (1) A proper authority must not refer a public interest disclosure to  
5 another agency under section 17 or subsection 20(1) if, in the  
6 authority's opinion:

7 (a) there is a serious risk that a person would engage in an  
8 unlawful reprisal; or

9 (b) the proper investigation of the disclosure would be  
10 prejudiced;

11 as a result of the reference to the other agency.

12 (2) Where a non-referral of the type mentioned in subsection (1)  
13 occurs, the matter must be referred immediately to the Ombudsman  
14 who must decide what action is to be taken in relation to the  
15 matter.

16 **22 Action by proper authority**

17 (1) Subject to subsection (2), if, after investigation, a proper authority  
18 is of the opinion that a public interest disclosure has revealed:

19 (a) that a person has engaged, is engaging, or proposes to  
20 engage, in disclosable conduct; or

21 (b) public wastage; or

22 (c) that a person has engaged, is engaging, or proposes to  
23 engage, in an unlawful reprisal; or

24 (d) that a public official has engaged, is engaging, or proposes to  
25 engage, in conduct that amounts to a substantial and specific  
26 danger to the health or safety of the public;

27 the authority must take such action as is necessary and reasonable:

28 (e) to prevent the conduct or reprisal continuing or occurring in  
29 future; and

30 (f) to discipline any person responsible for the conduct or  
31 reprisal.

## Section 23

- 1 (2) Where the Public Service Commissioner or the Parliamentary  
 2 Service Commissioner reports that a public interest disclosure has  
 3 revealed:
- 4 (a) that a person has engaged, is engaging, or proposes to  
 5 engage, in disclosable conduct; or  
 6 (b) public wastage; or  
 7 (c) that a person has engaged, is engaging, or proposes to  
 8 engage, in an unlawful reprisal; or  
 9 (d) that a public official has engaged, is engaging, or proposes to  
 10 engage, in conduct that amounts to a substantial and specific  
 11 danger to the health or safety of the public;  
 12 a proper authority to which the disclosure relates must, having  
 13 regard to any recommendations of the Public Service  
 14 Commissioner or the Parliamentary Service Commissioner, take  
 15 such action as is necessary and reasonable:
- 16 (e) to prevent the conduct or reprisal continuing or occurring in  
 17 future; and  
 18 (f) to discipline any person responsible for the conduct or  
 19 reprisal.
- 20 (3) Subsections (1) and (2) do not apply if:
- 21 (a) an investigation, or a report by the Public Service  
 22 Commissioner or the Parliamentary Service Commissioner,  
 23 reveals conduct referred to in paragraphs (1)(d) or (2)(d); and  
 24 (b) the conduct is necessary to give effect to a law of the  
 25 Commonwealth.

**23 Progress report**

- 26
- 27 (1) A person who makes a public interest disclosure, or a proper  
 28 authority which refers a disclosure to another proper authority, may  
 29 request the proper authority to which the disclosure was made or  
 30 referred to provide a progress report.
- 31 (2) Where a request is made under subsection (1), the proper authority  
 32 to which it is made shall provide a progress report to the person or  
 33 authority who requested it:
- 34 (a) as soon as practicable after receipt of the request; and

Section 24

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- 1 (b) if the proper authority takes further action with respect to the  
2 disclosure after providing a progress report under  
3 paragraph (a):  
4 (i) while the authority is taking action—at least once in  
5 every 90 day period commencing on the date of  
6 provision of the report under paragraph (a); and  
7 (ii) on completion of the action.
- 8 (3) A progress report provided under subsection (2) must contain the  
9 following particulars with respect to the proper authority that  
10 provides the report:  
11 (a) where the authority has declined to act on the public interest  
12 disclosure under section 16—that it has declined to act and  
13 the ground on which it so declined;  
14 (b) where the authority has referred the public interest disclosure  
15 to another proper authority—that it has referred the  
16 disclosure to another authority and the name of the authority  
17 to which the disclosure has been referred;  
18 (c) where the authority has accepted the public interest  
19 disclosure for investigation—the current status of the  
20 investigation;  
21 (d) where the authority has accepted the public interest  
22 disclosure for investigation and the investigation is  
23 complete—its findings and any action it has taken or  
24 proposes to take as a result of its findings.
- 25 (4) Nothing in this section prevents the proper authority from  
26 providing a progress report in accordance with subsection (3) to a  
27 person who may make a request under subsection (1).

28 **24 Joint action**

- 29 If more than one proper authority is required by this Act to act on a  
30 public interest disclosure, the proper authorities may enter into  
31 such arrangements with each other as are necessary and  
32 reasonable:  
33 (a) to avoid duplication of action; and

Section 24

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- 1 (b) to allow the resources of the authorities to be efficiently and
- 2 economically used to take action; and
- 3 (c) to achieve the most effective result.
- 4

Section 26

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2 **Part 4—Unlawful reprisals**

3 **Division 1—Unlawful reprisals—general**

4 **25 Agency must protect its officers against reprisals**

5                   Within 6 months of the commencement of this Act, an agency must  
6                   establish reasonable procedures to protect its officers from reprisals  
7                   that are, or may be, taken against them.

8 **26 Offence**

9                   A person must not engage, or attempt or conspire to engage, in an  
10                  unlawful reprisal.

11                  Penalty:

- 12                   (a) if the offender is a natural person—100 penalty units or  
13                   imprisonment for 1 year, or both;  
14                   (b) if the offender is a body corporate—500 penalty units.

15 **27 Function to assist complainant**

16                  (1) Where a proper authority receives a public interest disclosure that  
17                  relates to an unlawful reprisal, it shall provide the person who  
18                  made the public interest disclosure with information about the  
19                  protection and remedies available under this Act in relation to an  
20                  unlawful reprisal.

21                  (2) A proper authority must provide a person who has suffered an  
22                  unlawful reprisal with access to counselling services if requested  
23                  by the person to do so.

24 **28 Relocation powers**

25                  (1) Where a public official in relation to an agency applies in writing  
26                  to the agency for relocation and the agency considers:

Section 29

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- 1 (a) that there is a danger that a person will engage in an unlawful  
2 reprisal in relation to the public official if the public official  
3 continues to hold his or her current position; and  
4 (b) that the only practical means of removing or substantially  
5 removing the danger is relocation of the public official to  
6 another position in an agency;  
7 the agency must, as far as practicable, make arrangements for  
8 relocation of the public official to another position in an agency.
- 9 (2) Where a public official is relocated in accordance with this section,  
10 the employing agency of the public official being relocated must:  
11 (a) meet all reasonable relocation expenses; and  
12 (b) take all reasonable steps to ensure that the public official is  
13 placed in a position of equivalent level of salary and duties.

14 **29 Consent to relocation**

15 Section 28 does not authorise the relocation of a public official in  
16 relation to an agency to another position in the agency without the  
17 consent of the public official.

Section 30

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2 **Division 2—Civil claims**

3 **30 Liability in damages**

4 (1) A person who engages in an unlawful reprisal is liable in damages  
5 to any person who suffers detriment as a result.

6 (2) The damages may be recovered in an action as for a tort in any  
7 court of competent jurisdiction.

8 (3) Any remedy that may be granted by a court with respect to a tort,  
9 including exemplary damages, may be granted by a court in  
10 proceedings under this section.

11 **31 Application for injunction or order**

12 An application to a Supreme Court of a State or Territory for an  
13 injunction or order under section 32 may be made:

14 (a) by a person claiming that he or she is suffering or may suffer  
15 detriment from an unlawful reprisal; or

16 (b) by the Public Service Commissioner or the Parliamentary  
17 Service Commissioner on behalf of a person referred to in  
18 paragraph (a).

19 **32 Injunction or order to take action**

20 (1) If, on receipt of an application under section 31, a court is satisfied  
21 that a person has engaged, or is proposing to engage, in:

22 (a) an unlawful reprisal; or

23 (b) conduct that amounts to or would amount to:

24 (i) aiding, abetting, counselling or procuring a person to  
25 engage in an unlawful reprisal; or

26 (ii) inducing or attempting to induce, whether by threats,  
27 promises or otherwise, a person to engage in an  
28 unlawful reprisal; or

29 (iii) being in any way, directly or indirectly, knowingly  
30 concerned in, or party to, an unlawful reprisal;



- 1                   the court may:
- 2                   (c) order the person to take specified action to remedy any
- 3                   detriment caused by the unlawful reprisal; or
- 4                   (d) grant an injunction in terms the court considers appropriate.
- 5                   (2) The court may, pending the final determination of an application
- 6                   under section 31, make an interim order in the terms referred to in
- 7                   paragraph (1)(c) or grant an interim injunction.
- 8                   (3) The court may grant an injunction or an interim injunction under
- 9                   this section whether or not the person has previously engaged in
- 10                  conduct of that kind.
- 11                  (4) The court may make an order or an interim order under this section
- 12                  requiring a person to take specified action, whether or not the
- 13                  person has previously refused or failed to take that action.

14                  **33 Undertakings as to damages and costs**

- 15                  (1) If the Public Service Commissioner or the Parliamentary Service
- 16                  Commissioner applies under section 31 for an injunction or order,
- 17                  no undertaking as to damages or costs is required.
- 18                  (2) The Public Service Commissioner or the Parliamentary Service
- 19                  Commissioner may give an undertaking as to damages or costs on
- 20                  behalf of a person applying under section 31 and, in that event, no
- 21                  further undertaking is required.

Section 34

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## Part 5—Miscellaneous

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### 34 Confidentiality

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- (1) A public official must not, without reasonable excuse, make a record of, or wilfully disclose to another person, confidential information gained through the public official's involvement in the administration of this Act.

9

Penalty: 50 penalty units.

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- (2) Subsection (1) does not apply to a public official who makes a record of, or discloses, confidential information:

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(a) to another person for the purposes of this Act or the regulations; or

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(b) to another person, if expressly authorised under another law of the Commonwealth; or

16

(c) for the purposes of a proceeding in a court or tribunal.

17

- (3) In this section:

18

*confidential information* means:

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(a) information about the identity, occupation or whereabouts of a person who has made a public interest disclosure or against whom a public interest disclosure has been made; or

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(b) information contained in a public interest disclosure; or

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(c) information concerning an individual's personal affairs; or

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(d) information that, if disclosed, may cause detriment to a person.

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### 35 False or misleading information

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A person must not knowingly or recklessly make a false or misleading statement, orally or in writing, to a proper authority with the intention that it be acted on as a public interest disclosure.

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Penalty:

- 1 (a) if the offender is a natural person—100 penalty units or  
2 imprisonment for 1 year, or both;  
3 (b) if the offender is a body corporate—500 penalty units.

#### 4 **36 Limitation of liability**

- 5 (1) A person is not subject to any liability for making a public interest  
6 disclosure or providing any further information in relation to the  
7 disclosure to a proper authority investigating it, and no action,  
8 claim or demand may be taken or made of or against the person for  
9 making the disclosure or providing the further information.
- 10 (2) Without limiting subsection (1), a person:  
11 (a) does not commit an offence under a provision of an Act  
12 which imposes a duty to maintain confidentiality with respect  
13 to a matter; and  
14 (b) does not breach an obligation by way of oath or rule of law  
15 or practice requiring him or her to maintain confidentiality  
16 with respect to a matter;  
17 by reason only that the person has made a public interest disclosure  
18 with respect to that matter to a proper authority.
- 19 (3) Without limiting subsection (1), in proceedings for defamation  
20 there is a defence of absolute privilege in respect of the making of  
21 a public interest disclosure, or the provision of further information  
22 in relation to a public interest disclosure, to a proper authority.
- 23 (4) The defence of absolute privilege is not available where the  
24 complaint is frivolous, vexatious or otherwise meets the conditions  
25 specified in section 16.

#### 26 **37 Liability of person disclosing**

- 27 A person's liability for his or her own conduct is not affected by  
28 the person's disclosure of that conduct in a public interest  
29 disclosure.

Section 38

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1     **38 Regulations**

2                     The Governor-General may make regulations, not inconsistent with  
3                     this Act, prescribing matters:

4                     (a) required or permitted by this Act to be prescribed; or

5                     (b) necessary or convenient to be prescribed for carrying out or  
6                     giving effect to this Act.