



Australian Capital Territory

Public Interest Disclosure Amendment Act 2020

A2020-46

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J2019-1482

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Australian Capital Territory

Public Interest Disclosure Amendment Act 2020

A2020-46

An Act to amend the *Public Interest Disclosure Act 2012*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Public Interest Disclosure Amendment Act 2020*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

3 Legislation amended

This Act amends the *Public Interest Disclosure Act 2012*.

Note This Act also amends other legislation (see sch 1).

4 Object of Act Section 6 (a)

omit

make public interest disclosures

substitute

disclose disclosable conduct

5 Sections 7 and 8

substitute

7 Meaning of **public interest disclosure**

In this Act:

public interest disclosure means a disclosure of disclosable conduct that is taken to be a public interest disclosure under section 17A (3) or section 27 (4).

Note 1 Disclosers and witnesses in relation to public interest disclosures are protected from liability (see pt 7).

Note 2 A discloser for a public interest disclosure may forfeit protections (see s 37).

8 Meaning of **disclosable conduct**

- (1) For this Act, **disclosable conduct** means an action or a policy, practice or procedure of a public sector entity, or public official for a public sector entity, that—
 - (a) is maladministration; or
 - (b) results in a substantial and specific danger to public health or safety, or the environment.
- (2) However, **disclosable conduct** does not include an action or a policy practice or procedure of a public sector entity, or a public official for a public sector entity, that—
 - (a) relates to a personal work-related grievance of the person disclosing the conduct; or

- (b) is to give effect to a policy of the Territory about amounts, purposes or priorities of public expenditure.

Examples—par (a)

- 1 an interpersonal conflict between the person and another employee
- 2 a decision not to approve the person's leave application
- 3 a decision relating to the employment, transfer or promotion of the person
- 4 a decision relating to the terms and conditions of employment of the person
- 5 a decision to suspend or terminate the employment of the person, or to discipline the person

- (3) In this section:

environment—see the [Environment Protection Act 1997](#), dictionary.

maladministration means conduct or a policy, practice or procedure that—

- (a) results in a substantial mismanagement of public resources or public funds; or
- (b) involves substantial mismanagement in the performance of official functions.

public funds means funds available to, or under the control of, a public sector entity including public and trust money within the meaning of the [Financial Management Act 1996](#).

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

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

Examples—par (a)

- 1 students under the care or control of a teacher
- 2 patients in a health facility
- 3 detainees in a correctional facility

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

omit

public interest disclosure

substitute

disclosure of disclosable conduct

7 **Section 11 (1) (a) (i)**

substitute

- (i) the public sector standards commissioner; or

8 **Section 11 (1) (a) (vii) and (b) (v)**

omit

declared

substitute

nominated

9 **Section 11 (2) and (3) and note**

substitute

- (2) The head of a public sector entity must—
 - (a) nominate at least 1 person to be a disclosure officer for disclosures of disclosable conduct for the entity; and
 - (b) publish the disclosure officer’s contact details on the entity’s website; and
 - (c) if the entity is not the integrity commissioner—give the disclosure officer’s contact details to the integrity commissioner.

- (3) The integrity commissioner must publish, on the integrity commissioner's website, the contact details given under subsection (2) (c).

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

before

public interest disclosure

insert

disclosure of disclosable conduct or a

11 **Part 3**

substitute

Part 3 **Disclosing disclosable conduct**

14 **Anyone may disclose disclosable conduct**

Any person may disclose disclosable conduct.

15 **Who disclosure of disclosable conduct may be made to**

- (1) A person may disclose disclosable conduct to—
- (a) a disclosure officer; or
 - (b) a Minister; or
 - (c) if the person is a public official for a public sector entity—
 - (i) a person who, directly or indirectly, supervises or manages the person; or
 - (ii) for a public sector entity that has a governing board—a member of the board; or

- (iii) a public official of the entity who has the function of receiving information of the kind being disclosed or taking action in relation to that kind of information.

Examples

- 1 the chief financial officer of a public sector entity in relation to a disclosure about a substantial mismanagement of public resources by an employee of the entity
- 2 a public official on a clinical standards committee for a public hospital in relation to a disclosure about medical malpractice at the hospital that was resulting in a substantial danger to public health

- (2) If disclosable conduct is disclosed to a person mentioned in subsection (1) (b) or (c), the person must give a copy of the disclosure to a disclosure officer.

Note 1 A person must comply with s (2) as soon as possible after receiving the disclosure of disclosable conduct (see [Legislation Act](#), s 151B).

Note 2 A person who discloses disclosable conduct may disclose the conduct to the Legislative Assembly or a journalist in certain circumstances (see s 27).

16 How to disclose disclosable conduct

- (1) A disclosure of disclosable conduct may be made—
 - (a) orally or in writing; and
 - (b) using any form of electronic communication; and
 - (c) anonymously; and
 - (d) without the person disclosing the disclosable conduct asserting that the disclosure is made under this Act.

Example

Tranh comments to her supervisor during a coffee break that she believes there are a number of significant irregularities in the ordering of office supplies for her business unit. Tranh does not ask or infer that the irregularities should be investigated.

- (2) If the disclosure is made orally to a person mentioned in section 15 (1)—
 - (a) the person must make a written record of the disclosure; and
 - (b) the written record is taken to be a disclosure of disclosable conduct.
- (3) In this section:
electronic communication means communication by telephone, email, fax or any other electronic means.

17 Giving disclosure of disclosable conduct to integrity commissioner

- (1) This section applies to a disclosure officer (other than the integrity commissioner), if—
 - (a) a person discloses disclosable conduct to the disclosure officer; and
 - (b) the disclosure officer is satisfied on reasonable grounds that the disclosure is—
 - (i) about disclosable conduct; and
 - (ii) disclosed in good faith; and
 - (c) the disclosure is not about the integrity commissioner.

Note For disclosures about disclosable conduct of the integrity commissioner, see s 26A.

- (2) The disclosure officer must—
 - (a) give a copy of the disclosure to the integrity commissioner; and
 - (b) if the person who disclosed the conduct did not disclose the conduct anonymously—
 - (i) give the integrity commissioner the person's name and contact details; and

- (ii) tell the person, in writing, when the disclosure was given to the integrity commissioner.

Note 1 The disclosure officer must comply with s (2) as soon as possible after receiving the disclosure of disclosable conduct (see [Legislation Act](#), s 151B).

Note 2 A person who discloses disclosable conduct may disclose the conduct to the Legislative Assembly or a journalist in certain circumstances (see s 27).

17A When disclosure of disclosable conduct given to integrity commissioner is a public interest disclosure

- (1) This section applies if—
 - (a) a person discloses disclosable conduct to the integrity commissioner; or
 - (b) another disclosure officer gives the integrity commissioner a disclosure of disclosable conduct under section 17.

Note The integrity commissioner is a disclosure officer (see s 11).

- (2) The integrity commissioner must assess the disclosure and decide if the commissioner is satisfied on reasonable grounds that the disclosure is—
 - (a) about disclosable conduct; and
 - (b) disclosed in the public interest; and
 - (c) not frivolous or vexatious.
- (3) If the integrity commissioner is satisfied under subsection (2), the disclosure of disclosable conduct—
 - (a) is taken to be a public interest disclosure; and
 - (b) the person who disclosed the disclosable conduct is taken to be the discloser for the public interest disclosure; and

- (c) the protections in part 7 are taken to apply to the discloser for the public interest disclosure from the day the conduct was disclosed.

Note A discloser for a public interest disclosure may forfeit protections (see s 37).

17B Notice about disclosure of disclosable conduct that is not public interest disclosure

- (1) If a disclosure of disclosable conduct is not taken to be a public interest disclosure under section 17A (3) (a), the integrity commissioner must tell the relevant people, in writing, that—
 - (a) the disclosure is not taken to be a public interest disclosure; and
 - (b) the protections in part 7 do not apply to the person who disclosed the conduct in relation to the disclosure.

- (2) In this section:

relevant people means—

- (a) if the disclosure was given to the integrity commissioner by another disclosure officer under section 17—the disclosure officer; and
- (b) if the person who disclosed the disclosable conduct did not disclose the conduct anonymously—the person.

Note A person who discloses disclosable conduct may disclose the conduct to the Legislative Assembly or a journalist in certain circumstances (see s 27).

12 Part 4 heading

substitute

Part 4 Dealing with a public interest disclosure

13 Sections 18 to 20

substitute

18 Meaning of *investigating entity*

In this part:

investigating entity, for an investigation of a public interest disclosure, means—

- (a) if the integrity commissioner does not refer the disclosure to an entity for investigation under section 19 (2)—the integrity commissioner; or
- (b) if the integrity commissioner refers the disclosure to an entity for investigation under section 19 (2)—the entity.

19 Integrity commissioner—investigate or refer public interest disclosure

- (1) This section applies to the integrity commissioner if—
 - (a) a disclosure of disclosable conduct is taken to be a public interest disclosure under section 17A (3); or
 - (b) the integrity commissioner becomes aware of a disclosure of disclosable conduct that is taken to be a public interest disclosure under section 27 (4).
- (2) If the public interest disclosure relates to a public sector entity other than a Legislative Assembly entity, the integrity commissioner must investigate the disclosure or refer it to 1 of the following entities for investigation:
 - (a) the head of a public sector entity;
 - (b) the head of service;
 - (c) the ombudsman;
 - (d) the public sector standards commissioner.

- (3) If the public interest disclosure relates to a Legislative Assembly entity, the integrity commissioner must investigate the disclosure.
- (4) In deciding whether to refer the public interest disclosure to an entity under subsection (2), the integrity commissioner must consult the entity.
- (5) If the integrity commissioner refers the public interest disclosure to an entity under subsection (2), the integrity commissioner must give the entity—
 - (a) a copy of the disclosure; and
 - (b) if the discloser for the public interest disclosure did not disclose the conduct anonymously—the name and contact details of the discloser.

Note For par (b), a discloser for a public interest disclosure may disclose the conduct to the Legislative Assembly or a journalist in certain circumstances (see s 27A).

19A Notice about investigation

- (1) This section applies if the discloser for a public interest disclosure did not disclose the conduct anonymously.
- (2) The integrity commissioner must tell the discloser for the public interest disclosure, in writing—
 - (a) that the disclosure will be investigated under section 20; and
 - (b) the name and contact details of the investigating entity for the public interest disclosure; and
 - (c) if the integrity commissioner refers the disclosure to an entity under section 19 (2)—the date of the referral.

- (2) The integrity commissioner must give the discloser for the public interest disclosure information about the following:
 - (a) the obligations under section 23 (Discloser must be kept informed about investigation);
 - (b) the circumstances mentioned in section 27A (Giving public interest disclosure to Legislative Assembly or journalist);
 - (c) the protections under part 7 (Protections for disclosers and witnesses).

20 Investigating public interest disclosure

- (1) The investigating entity for a public interest disclosure must—
 - (a) investigate the disclosure; and
 - (b) comply with the rules of natural justice and procedural fairness in relation to investigating the disclosure.
- (2) The investigating entity may end the investigation if—
 - (a) the discloser for the public interest disclosure has withdrawn the disclosure and the investigating entity is reasonably satisfied that there are no further matters in relation to the disclosure that warrant investigation; or
 - (b) if a discloser for the public interest disclosure disclosed the conduct anonymously and the investigating entity is reasonably satisfied that this makes it impracticable for the disclosure to be investigated; or
 - (c) if the discloser for the public interest disclosure did not disclose the conduct anonymously—
 - (i) the investigating entity asks the discloser for assistance to investigate the disclosure; and
 - (ii) the discloser fails, without reasonable excuse, to give the assistance; and

- (iii) the investigating entity is reasonably satisfied that this makes it impracticable for the disclosure to be investigated; or
- (d) the investigating entity is reasonably satisfied that—
 - (i) the disclosed information is wrong in a material way and investigation is not warranted; or
 - (ii) the age of the disclosed information makes it impracticable for the disclosure to be investigated; or
 - (iii) there is a more appropriate way reasonably available to deal with the disclosable conduct that is the subject of the public interest disclosure.

Note A discloser for a public interest disclosure may disclose the conduct to the Legislative Assembly or a journalist in certain circumstances (see s 27A).

14 Sections 22 and 23

substitute

23 Discloser must be kept informed about investigation

- (1) The investigating entity for a public interest disclosure must tell the discloser for the public interest disclosure, in writing—
 - (a) the progress of the investigation of the disclosure, at least once every 3 months; and
 - (b) the outcome of the investigation of the disclosure, including any action by the head of a public sector entity in relation to the disclosure under section 24; and
 - (c) about any referral of the disclosure to the chief police officer under section 21; and

-
- (d) if the investigating entity for the disclosure ends the investigation under section 20—
- (i) the ground mentioned in section 20 (2) for ending the investigation; and
 - (ii) the reasons for ending the investigation on that ground.
- (2) This section does not apply if the discloser for the public interest disclosure—
- (a) disclosed the conduct anonymously; or
 - (b) has asked, in writing, not to be kept informed about the disclosure.
- (3) If the public interest disclosure has been referred to the chief police officer under section 21, the investigating entity for the public interest disclosure is only required to comply with subsection (1) (a), (b) and (d) to the extent that relevant information has been given to the entity by the chief police officer.

Note 1 Certain information need not be given to the discloser for a public interest disclosure (see s 26).

Note 2 A discloser for a public interest disclosure may disclose the conduct to the Legislative Assembly or a journalist in certain circumstances (see s 27A).

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

substitute

- (b) if an investigation of a public interest disclosure in relation to the disclosable conduct has been completed—discipline any person responsible for the disclosable conduct.

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

substitute

- (2) The head of the public sector entity must—
- (a) tell the integrity commissioner about any action taken or proposed to be taken; and
 - (b) tell the discloser for the public interest disclosure about any action taken or proposed to be taken unless—
 - (i) the discloser disclosed the conduct anonymously; or
 - (ii) the discloser has asked, in writing, not to be kept informed about the public interest disclosure.

Note 1 Certain information need not be given to the discloser for a public interest disclosure (see s 26).

Note 2 A discloser for a public interest disclosure may disclose the conduct to the Legislative Assembly or a journalist in certain circumstances (see s 27A).

17 Section 25 heading

substitute

25 Integrity commissioner must be kept informed

18 Section 25 (1)

omit

An investigating entity for a public interest disclosure

substitute

If the investigating entity for a public interest disclosure is not the integrity commissioner, the entity

19 Section 25 (1) (b)

substitute

(b) the referral of the disclosure under section 21 (Referral to chief police officer);

20 Section 25 (1) (d)

omit

not to investigate the disclosure, or

21 Section 25 (1) (d) (iii)

omit

section 20 (g)

substitute

section 20 (2) (d) (iii)

22 Section 25 (2)

before

disclosure

insert

public interest

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

after

discloser

insert

for a public interest disclosure

24 Section 26 (1), examples

substitute

Example

The integrity commissioner need not give the head of a public sector entity to which a public interest disclosure relates a copy or record of the disclosure if the integrity commissioner believes it is likely that detrimental action will be taken against the discloser for the public interest disclosure as a result.

25 Section 26 (3) and (4)

substitute

- (3) A discloser for a public interest disclosure need not be told information about the disclosure, if telling the discloser—
- (a) would, or could reasonably be expected to, identify another person who gives information in relation to the disclosure; or
 - (b) is contrary to a law in force in the Territory.

26 New section 26A

in part 4, insert

26A Disclosable conduct of integrity commissioner

- (1) This section applies if—
- (a) a person discloses disclosable conduct about the integrity commissioner to a person mentioned in section 15 (1) (the *receiver*); and
 - (b) the receiver is satisfied on reasonable grounds that the disclosure—
 - (i) is about disclosable conduct; and
 - (ii) is disclosed in good faith.

-
- (2) The receiver must—
 - (a) give a copy of the disclosure of disclosable conduct to the inspector; and
 - (b) if the person did not disclose the conduct anonymously—
 - (i) give the inspector the name and contact details of the person; and
 - (ii) tell the person, in writing, the date when the disclosure was given to the inspector.
 - (3) If the receiver gives a disclosure of disclosable conduct to the inspector under subsection (2), the disclosure is taken to be a complaint to the inspector under the *Integrity Commission Act 2018*, section 257 (Inspector—making a complaint to the inspector).
 - (4) In this section:
inspector—see the *Integrity Commission Act 2018*, dictionary.

27 Section 27

substitute

27 Giving disclosure of disclosable conduct to Legislative Assembly or journalist

- (1) This section applies to a person who—
 - (a) disclosed disclosable conduct to a person mentioned in section 15 (1); and
 - (b) did not disclose the conduct anonymously; and
 - (c) has not received the notice mentioned in section 17B or 19A within 3 months after the day the person disclosed the disclosable conduct.
- (2) The person may disclose the disclosable conduct to a member of the Legislative Assembly or a journalist.

- (3) The person may only disclose information that is reasonably necessary to show that the conduct is disclosable conduct.
- (4) The disclosure of disclosable conduct by the person under subsection (2) is taken to be a public interest disclosure.
- (5) The person is taken to be the discloser for a public interest disclosure.
- (6) The protections in part 7 are taken to apply to the person from the day the person disclosed the conduct.

Note 1 The integrity commissioner must refer or investigate the disclosure under s 19.

Note 2 A discloser for a public interest disclosure may forfeit protections (see s 37).

27A Giving public interest disclosure to Legislative Assembly or journalist

- (1) A discloser for a public interest disclosure may give the public interest disclosure to a member of the Legislative Assembly or a journalist if—
 - (a) the discloser is told under section 19A that the disclosure will be investigated, but is not told about the progress of the investigation under section 23 for more than 3 months; or
 - (b) the following applies:
 - (i) the public interest disclosure is investigated under section 20;
 - (ii) there is clear evidence that 1 or more instances of disclosable conduct mentioned in the disclosure has occurred, or was likely to have occurred;
 - (iii) the discloser is told by the investigating entity that no action will be taken in relation to the disclosable conduct under section 24 (Public sector entity must take action).

- (2) The discloser for a public interest disclosure may only give the Legislative Assembly or a journalist information reasonably related to the disclosure.

28 Section 28

substitute

28 Integrity commissioner's functions

- (1) The integrity commissioner has the following functions:
- (a) to give advice about disclosures of disclosable conduct and public interest disclosures;
 - (b) to monitor how public sector entities deal with disclosures of disclosable conduct and public interest disclosures;
 - (c) to review the way in which public sector entities investigate and deal with public interest disclosures generally, or particular public interest disclosures;
 - (d) to ensure just outcomes for people who make public interest disclosures, including by preventing and remedying the effect of detrimental action against people because of public interest disclosures;
 - (e) to undertake, or coordinate the undertaking of, education and training programs about disclosures of disclosable conduct and public interest disclosures.
- (2) The integrity commissioner may tell the ombudsman about a disclosure of disclosable conduct or a public interest disclosure if the commissioner believes it is appropriate for the ombudsman to know about the disclosure.

29 Section 29 heading

substitute

29 Integrity commissioner may review decisions

30 Section 29 (1)

before

commissioner

insert

integrity

31 Section 29 (1) (a)

substitute

- (a) a decision by another investigating entity to end its investigation of a public interest disclosure under section 20 (2); and

32 Section 29 (2)

before 1st mention of

commissioner

insert

integrity

33 Section 29 (4) and (5)

before

commissioner

insert

integrity

34 Section 30 heading

substitute

30 Report by integrity commissioner

35 Section 30 (1)

before

commissioner

insert

integrity

36 Section 30 (1) (b)

substitute

(b) how a disclosure of disclosable conduct or a public interest disclosure is dealt with by a public sector entity.

37 Section 30 (2)

before 1st mention of

commissioner

insert

integrity

38 Section 31 heading

substitute

31 Integrity commissioner must tell discloser about decision

39 Section 31 (1)

omit everything before paragraph (a), substitute

- (1) If the integrity commissioner makes a decision under section 29 (4) (a) or (b), the commissioner must tell the discloser for the public interest disclosure that is the subject of the decision—

40 Section 31 (2) (a)

substitute

- (a) the discloser for the public interest disclosure disclosed the conduct anonymously; or

41 Section 31 (2), note

substitute

Note Certain information need not be given to the discloser for a public interest disclosure (see s 26).

42 Section 32 heading

substitute

32 Integrity commissioner's guidelines

43 Section 32 (1)

substitute

- (1) The integrity commissioner must make guidelines about—
- (a) the way investigating entities investigate public interest disclosures; and
 - (b) the way in which public sector entities deal with disclosures of disclosable conduct and public interest disclosures; and

- (c) the way members of the Legislative Assembly are to deal with—
 - (i) disclosures of disclosable conduct made under section 27 (Giving disclosure of disclosable conduct to Legislative Assembly or journalist); and
 - (ii) public interest disclosures made under section 27A (Giving public interest disclosure to Legislative Assembly or journalist).

44 Sections 33 and 34

substitute

33 Integrity commissioner's procedures

- (1) The integrity commissioner must make procedures for dealing with disclosures of disclosable conduct and public interest disclosures.
- (2) The procedures must include—
 - (a) clear obligations on public sector entities and their public officials to take action to protect disclosers for public interest disclosures; and
 - (b) risk management steps for assessing and minimising—
 - (i) detrimental action against people because of public interest disclosures; and
 - (ii) detriment to people against whom allegations of disclosable conduct are made in a public interest disclosure.

34 Role of ombudsman

- (1) This section applies if any of the following entities takes an action in relation to the disclosure of disclosable conduct or a public interest disclosure in the exercise of a function under this Act:
 - (a) the head of a public sector entity;

- (b) the head of service;
 - (c) the public sector standards commissioner.
- (2) A person may complain to the ombudsman about the action.
- (3) Without limiting subsection (2), the person may complain about whether a public sector entity or public official has followed—
 - (a) guidelines made by the integrity commissioner under section 32;
or
 - (b) procedures issued by the integrity commissioner under section 33.
- (4) The ombudsman may exercise the following functions in relation to the complaint:
 - (a) giving advice about disclosures of disclosable conduct or public interest disclosures;
 - (b) monitoring the management of disclosures of disclosable conduct or public interest disclosures by the entity;
 - (c) reviewing the way in which the entity dealt with or investigated the disclosure of disclosable conduct or public interest disclosure that is the subject of the complaint;
 - (d) ensuring just outcomes for people who make public interest disclosures, including preventing and remedying the effect of detrimental action taken against disclosers or witnesses because of a public interest disclosure.
- (5) Nothing in this Act is intended to limit the ombudsman's powers under the *Ombudsman Act 1989*.

45 Part 7 heading

substitute

Part 7 Protections for disclosers and witnesses

46 Section 36

substitute

36 Protection from defamation action

Without limiting section 35, in a proceeding for defamation brought because of a public interest disclosure, the discloser for the public interest disclosure has a defence of absolute privilege for publishing the information disclosed.

**47 Loss of protection
Section 37**

omit

if a person makes a public interest disclosure and

substitute

to a discloser for a public interest disclosure if

48 Section 37 (1) (a)

after

information

insert

about the disclosure, or part of the disclosure,

49 Section 37 (1) (b)

after

disclosure

insert

, or part of the disclosure,

50 Section 37 (2)

after

disclosure

insert

, or part of the disclosure

**51 Damages for detrimental action
Section 41 (1)**

after

else

insert

because of a public interest disclosure

52 Section 42

substitute

42 Injunction to prevent detrimental action etc

- (1) On application, the Supreme Court may—
 - (a) if satisfied that a person has taken detrimental action because of a public interest disclosure—order the person who took the detrimental action to remedy the action; or

- (b) if satisfied that a person is taking, or is likely to take, detrimental action because of a public interest disclosure—grant an injunction to prevent the detrimental action being taken.
- (2) An application may be made by—
 - (a) the integrity commissioner; or
 - (b) the discloser for the public interest disclosure; or
 - (c) a person against whom the detrimental action has been or is likely to be taken.
- (3) The Supreme Court may grant an interim injunction restraining a person from taking detrimental action because of a public interest disclosure before deciding an application for an injunction under this section.

42A Protection of witnesses

- (1) A person is not subject to criminal or civil liability because the person (voluntarily or otherwise) gives information, produces a document or answers a question in relation to a public interest disclosure if—
 - (a) the person does so at the request of the investigating entity for the public interest disclosure; and
 - (b) the information, document or answer is relevant to the investigation of the public interest disclosure by the entity.
- (2) However, if the information, document or answer relates to the person's own conduct, this section does not affect their liability for the conduct.

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

before

commissioner

insert

integrity

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

substitute

(d) an investigating entity other than the integrity commissioner; or

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

before

commissioner

insert

integrity

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

substitute

(iv) an investigating entity other than the integrity commissioner; or

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

after

discloser

insert

for the public interest disclosure

58 New section 45

insert

45 Annual reporting by integrity commissioner

- (1) The integrity commissioner must include the following information in the commission annual report for each year:
 - (a) the number of disclosures of disclosable conduct given to the integrity commissioner under section 17;
 - (b) the number of disclosures of disclosable conduct taken to be public interest disclosures under section 17A (3);
 - (c) the number of disclosures of disclosable conduct not taken to be public interest disclosures under section 17A (3);
 - (d) for a disclosure of disclosable conduct not taken to be a public interest disclosure under section 17A (3)—information about the ground the integrity commissioner was not satisfied of in relation to the disclosure;
 - (e) the number of referrals under section 19 (Integrity commissioner—investigate or refer public interest disclosure);
 - (f) the number of investigations under section 20, including—
 - (i) for each investigating entity for a public interest disclosure—the number of investigations of public interest disclosures by the entity; and

- (ii) whether, on investigation, the public interest disclosure was about disclosable conduct; and
 - (iii) the number of investigations brought to an end under section 20; and
 - (iv) the ground mentioned in section 20 (2) for ending the investigation;
 - (g) the number of referrals under section 21 (Referral to chief police officer);
 - (h) information about any action taken in accordance with section 24 (Public sector entity must take action);
 - (i) the number of reviews under section 29 (Integrity commissioner may review decisions);
 - (j) the number of reports under section 30 (Report by integrity commissioner);
 - (k) the number of prosecutions under section 40 (Offence—taking detrimental action);
 - (l) information about education and training programs about disclosable conduct and public interest disclosures undertaken or coordinated by the integrity commissioner.
- (2) In this section:
- commission annual report*—see the *Integrity Commission Act 2018*, section 217.

59 **Approved forms**
Section 46

omit

60 New section 48

insert

48 Review of Act

- (1) The Minister must, in consultation with the Speaker, review the operation of this Act—
 - (a) at the same time as the Minister reviews the *Integrity Commission Act 2018* under section 303 of that Act; and
 - (b) in conjunction with that Act.
- (2) The Minister must present a report of the review to the Legislative Assembly at the same time the Minister presents a report of the review of the *Integrity Commission Act 2018* under section 303 (2) of that Act.

61 Dictionary, note 2

insert

- public sector standards commissioner

62 Dictionary, definitions of *commissioner* and *contact details*

omit

63 Dictionary, definition of *discloser*

substitute

discloser, for a public interest disclosure, means the person who discloses disclosable conduct that is taken to be a public interest disclosure under—

- (a) section 17A (2); or
- (b) section 27 (4).

64 Dictionary, definition of *disclosure officer*

omit

public interest disclosure

substitute

disclosure of disclosable conduct

65 Dictionary, definition of *investigating entity*

substitute

investigating entity, for an investigation of a public interest disclosure—see section 18.

Schedule 1 **Consequential and other amendments**

(see s 3)

Part 1.1 **Freedom of Information Act 2016**

[1.1] Schedule 1, new section 1.9 (2)

insert

- (2) Information that would, or could reasonably be expected to, disclose the identity of a person who gives information, produces a document or answers a question in relation to an investigation of a public interest disclosure under the [Public Interest Disclosure Act 2012](#).

Part 1.2 **Integrity Commission Act 2018**

[1.2] Section 24, new note

insert

Note 2 The commissioner has functions under the [Public Interest Disclosure Act 2012](#).

[1.3] Section 40

substitute

40 Commissioner—acting appointment

Note The Speaker has power to appoint an acting commissioner if the position is vacant or if the commissioner cannot for any reason exercise a function (see [Legislation Act](#), s 209 (1)).

- (1) The Speaker must not appoint a person to act as commissioner unless satisfied that the person has extensive knowledge of, and experience in—
 - (a) criminal investigation or criminal adjudication; or
 - (b) law enforcement or the conduct of investigations; or
 - (c) public administration, governance or government.
- (2) An acting appointment must be made in consultation with the relevant Assembly committee.
- (3) An acting appointment must not be for a term longer than 6 months.
- (4) To remove any doubt, concurrent appointments may be made.

Example—concurrent appointment

If the commissioner has a conflict of interest in relation to an investigation, the Speaker may appoint an acting commissioner to perform functions of the commissioner in relation to the investigation while the commissioner continues to perform their other functions.

- (5) To remove any doubt—
 - (a) subsections (1) and (2) displace the [Legislation Act](#), section 209 (2) and (3); and
 - (b) subsection (3) displaces the [Legislation Act](#), section 221 (1) and (2); and
 - (c) the remaining provisions of the [Legislation Act](#), part 19.3 (Appointments) apply in relation to an acting appointment.

[1.4] New section 59A

insert

59A Certain disclosures under Public Interest Disclosure Act 2012 may be corruption complaints

- (1) This section applies if—
 - (a) a person discloses information about conduct under the *Public Interest Disclosure Act 2012*, part 3 (Disclosing disclosable conduct); and
 - (b) the disclosure is assessed by the integrity commissioner under that *Act*, section 17A (2) (When disclosure of disclosable conduct given to integrity commissioner is a public interest disclosure); and
 - (c) the disclosure is not taken to be a public interest disclosure under that *Act*, s 17A (3), because the commissioner is not satisfied that the disclosure is about disclosable conduct; and
 - (d) the integrity commissioner suspects on reasonable grounds that the conduct in the disclosure may constitute corrupt conduct.
- (2) The disclosure is taken to be a corruption complaint made by the person to the commission under section 57 (Anyone may make corruption complaint).

[1.5] New section 218 (1) (ca)

insert

- (ca) disclosures under the *Public Interest Disclosure Act 2012* taken to be corruption complaints under section 59A (Certain disclosures under Public Interest Disclosure Act 2012 may be corruption complaints), including a description of each disclosure;

[1.6] Section 246

substitute

246 Inspector—acting appointment

Note The Speaker has power to appoint an acting inspector if the position is vacant or if the inspector cannot for any reason exercise a function (see [Legislation Act](#), s 209 (1)).

- (1) The Speaker must not appoint a person to act as inspector unless satisfied that the person has extensive knowledge of, and experience in—
 - (a) criminal investigation or criminal adjudication; or
 - (b) law enforcement or the conduct of investigations; or
 - (c) public administration, governance or government.
- (2) An acting appointment must be made in consultation with the relevant Assembly committee.
- (3) An acting appointment must not be for a term longer than 6 months.
- (4) To remove any doubt, concurrent appointments may be made.

Example—concurrent appointment

If the inspector has a conflict of interest in relation to an investigation, the Speaker may appoint an acting inspector to perform functions of the inspector in relation to the investigation while the inspector continues to perform their other functions.

- (5) To remove any doubt—
 - (a) subsections (1) and (2) displace the [Legislation Act](#), section 209 (2) and (3); and
 - (b) subsection (3) displaces the [Legislation Act](#), section 221 (1) and (2); and
 - (c) the remaining provisions of the [Legislation Act](#), part 19.3 (Appointments) apply in relation to an acting appointment.

[1.7] Section 286 (4) and example

substitute

- (4) Section 40 (Commissioner—acting appointment) applies to the appointment of the special investigator as if it were an appointment of an acting commissioner.

[1.8] New section 289 (3) and (4)

insert

- (3) For this section, the complainant has not **published** the information if the complainant disclosed the information under the *Public Interest Disclosure Act 2012* in the reasonable belief that the information was about disclosable conduct.

- (4) In this section:

disclosable conduct—see the *Public Interest Disclosure Act 2012*, dictionary.

Part 1.3 Ombudsman Act 1989

[1.9] Section 5 (3) (b) (ii)

omit

section 34 (1)

substitute

section 34 (4)

Schedule 1 Consequential and other amendments
Part 1.4 Public Sector Management Act 1994

Amendment [1.10]

Part 1.4 **Public Sector Management Act 1994**

[1.10] Section 143, note

omit

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 20 February 2020.

2 Notification

Notified under the [Legislation Act](#) on 4 September 2020.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Public Interest Disclosure Amendment Bill 2020, which was passed by the Legislative Assembly on 27 August 2020.

Clerk of the Legislative Assembly

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