

2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

Public Interest Disclosure Bill 2006

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2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

Public Interest Disclosure Bill 2006

A Bill for

An Act to protect people who disclose certain conduct in the public sector that is contrary to the public interest, and for related purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Public Interest Disclosure Act 2006*.

4 **2 Commencement**

5 (1) This Act commences on a day fixed by the Minister by written
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see Legislation Act, s 75 (1)).

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

12 (2) If this Act has not commenced within 9 months beginning on its
13 notification day, it automatically commences on the first day after
14 that period.

15 (3) The Legislation Act, section 79 (Automatic commencement of
16 postponed law) does not apply to this Act.

17 **3 Dictionary**

18 The dictionary at the end of this Act is part of this Act.

19 *Note 1* The dictionary at the end of this Act defines certain terms used in this
20 Act, and includes references (*signpost definitions*) to other terms
21 defined elsewhere.

22 For example, the signpost definition '*Legislative Assembly*
23 *secretariat*—see the *Public Sector Management Act 1994*, section 3.'
24 means that the term 'Legislative Assembly secretariat' is defined in that
25 section and the definition applies to this Act.

26 *Note 2* A definition in the dictionary (including a signpost definition) applies to
27 the entire Act unless the definition, or another provision of the Act,
28 provides otherwise or the contrary intention otherwise appears (see
29 Legislation Act, s 155 and s 156 (1)).

1 **4** **Notes**

2 A note included in this Act is explanatory and is not part of this Act.

3 *Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of
4 notes.

5 **5** **Offences against Act—application of Criminal Code etc**

6 Other legislation applies in relation to offences against this Act.

7 *Note 1* *Criminal Code*

8 The Criminal Code, ch 2 applies to all offences against this Act (see
9 Code, pt 2.1).

10 The chapter sets out the general principles of criminal responsibility
11 (including burdens of proof and general defences), and defines terms
12 used for offences to which the Code applies (eg *conduct*, *intention*,
13 *recklessness* and *strict liability*).

14 *Note 2* *Penalty units*

15 The Legislation Act, s 133 deals with the meaning of offence penalties
16 that are expressed in penalty units.

17 **6** **Object of Act**

18 The object of this Act is to improve the quality of public sector
19 administration by—

20 (a) providing a way for people to confidentially disclose concerns
21 about conduct in the public sector that is contrary to the public
22 interest; and

23 (b) providing a way for people’s concerns about conduct in the
24 public sector that is contrary to the public interest to be
25 investigated and reported; and

26 (c) protecting from reprisal people who disclose concerns about
27 conduct in the public sector that is contrary to the public
28 interest.

1 **Part 2** **Important concepts**

2 **7** **Meaning of *public interest disclosure***

- 3 (1) For this Act, a *public interest disclosure* is a disclosure that—
- 4 (a) contains public interest information implicating a government
- 5 entity or government official; and
- 6 (b) is made to a contact person for the disclosure (the *receiver*).
- 7 (2) For this section, a *disclosure* is a statement made by a person that
- 8 the person knows, believes or suspects something about an event,
- 9 action or circumstance.

10 *Note* If a disclosure is not a public interest disclosure as defined in this

11 section, there is no obligation under s 23 for an investigator to

12 investigate the disclosure.

13 **8** **Meaning of *public interest information* implicating a**

14 **government entity or government official**

- 15 (1) For this Act, *public interest information* implicating a government
- 16 entity or government official is information that tends to show that
- 17 the government entity or government official—
- 18 (a) has engaged in conduct contrary to the public interest; or
- 19 (b) is engaging in conduct contrary to the public interest; or
- 20 (c) is, in the foreseeable future, likely to engage in conduct
- 21 contrary to the public interest.

- 1 (2) To remove any doubt, a government entity is *implicated* in a public
2 interest disclosure if public interest information in the public interest
3 disclosure implicates a government official for the government
4 entity.

5 **Examples of conduct contrary to the public interest**

- 6 1 systemic failure—failure to implement a system to give effect to a territory
7 law
8 2 policy failure—adoption of a policy that is inconsistent with a territory law
9 3 pattern of noncompliance—repeated failure to comply with a territory law
10 4 fraud—intentionally falsifying a document
11 5 corruption—receiving a benefit for divulging confidential information

12 *Note* An example is part of the Act, is not exhaustive and may extend, but
13 does not limit, the meaning of the provision in which it appears (see
14 Legislation Act, s 126 and s 132).

15 **9 Meaning of government entity**

- 16 (1) For this Act, a *government entity* is any of the following entities:
17 (a) an administrative unit;
18 (b) a territory authority;
19 (c) a territory-owned corporation;
20 (d) a subsidiary of a territory-owned corporation;
21 (e) a territory instrumentality;
22 (f) a statutory office-holder;
23 (g) the Legislative Assembly secretariat;
24 (h) an entity prescribed by regulation for this subsection.
25 (2) However, *government entity* does not include any of the following
26 entities:
27 (a) the ombudsman;
28 (b) a judge;

- 1 (c) the master of the Supreme Court;
2 (d) a magistrate;
3 (e) a member of the Legislative Assembly;
4 (f) a person employed under the *Legislative Assembly (Members’*
5 *Staff) Act 1989*;
6 (g) an entity prescribed by regulation for this subsection.

7 **10 Meaning of government official**

- 8 (1) For this Act, a **government official** for a government entity is—
9 (a) a person who is or has been—
10 (i) an employee of the government entity; or
11 (ii) a contractor carrying out a function of the government
12 entity for the government entity; or
13 (b) a person prescribed by regulation as a government official for a
14 government entity for this definition.
15 (2) In this section:
16 **employee**, of a government entity, includes—
17 (a) if the government entity is a territory instrumentality—a staff
18 member of the territory instrumentality if the CEO of the
19 territory instrumentality has, or had, all the powers of a chief
20 executive in relation to the staff member under the *Public*
21 *Sector Management Act 1994*, section 24 (Powers of chief
22 executive officers of certain territory instrumentalities); and
23 (b) if the government entity is a statutory-office holder—a staff
24 member of the statutory office-holder if the statutory office-
25 holder has, or had, all the powers of a chief executive in
26 relation to the staff member under the *Public Sector*
27 *Management Act 1994*, section 25 (Powers of certain statutory
28 office-holders); and

- 1 (c) if the government entity is the Legislative Assembly
2 secretariat—
3 (i) the clerk of the Legislative Assembly; and
4 (ii) a member of the secretariat staff under the *Public Sector*
5 *Management Act 1994*, section 54.

6 **11 Meaning of *contact person***

- 7 (1) For this Act, a ***contact person*** for a disclosure is—
8 (a) for any disclosure—
9 (i) a declared contact person for any government entity
10 implicated in the disclosure; or
11 *Note* ***Declared contact person*** is defined in s (2).
12 (ii) if there is no declared contact person—the CEO of any
13 government entity implicated in the disclosure; or
14 (iii) the ombudsman; or
15 (b) for a disclosure containing public interest information about a
16 matter that relates to the *Financial Management Act 1996*—the
17 auditor-general; or
18 (c) for a disclosure containing public interest information about
19 employment under the *Public Sector Management Act 1994*—
20 the commissioner for public administration.
21 (2) The CEO of a government entity may declare someone to be a
22 contact person for public interest disclosures implicating the
23 government entity (a ***declared contact person***).
24 (3) A declaration is a notifiable instrument.
25 *Note* A notifiable instrument must be notified under the Legislation Act.

1 **12 Meaning of *CEO* of a government entity**

2 In this Act:

3 ***CEO***, of a government entity, means—

4 (a) if the government entity is an administrative unit—the chief
5 executive of the administrative unit; or

6 (b) if the government entity is a territory authority—the person
7 who has responsibility for managing the affairs of the territory
8 authority; or

9 (c) if the government entity is a territory-owned corporation or a
10 subsidiary of a territory owned corporation—the person who
11 has responsibility for managing the affairs of the territory-
12 owned corporation; or

13 (d) if the government entity is a territory instrumentality—the
14 person who has responsibility for managing the affairs of the
15 territory instrumentality; or

16 (e) if the government entity is a statutory office-holder—the
17 statutory office-holder; or

18 (f) if the government entity is the Legislative Assembly
19 secretariat—the clerk of the Legislative Assembly; or

20 (g) if the government entity is an entity prescribed by regulation
21 for this definition—the person with overall responsibility for
22 the control of the entity.

23 **Examples of person with responsibility for managing affairs of an entity**

24 1 Director of the Canberra Institute of Technology

25 2 Chief Planning Executive of the ACT Planning and Land Authority

26 *Note* An example is part of the Act, is not exhaustive and may extend, but
27 does not limit, the meaning of the provision in which it appears (see
28 Legislation Act, s 126 and s 132).

1 **13** **Meaning of *supervisor***

- 2 (1) For this Act, the *supervisor* for a public interest disclosure is—
- 3 (a) for a public interest disclosure containing public interest
4 information about a matter that relates to the *Financial*
5 *Management Act 1996*—
- 6 (i) the auditor-general; or
- 7 (ii) if the auditor general is implicated in the public interest
8 disclosure—the ombudsman; and
- 9 (b) for a public interest disclosure containing public interest
10 information about employment under the *Public Sector*
11 *Management Act 1994*—
- 12 (i) the commissioner for public administration; or
- 13 (ii) if the commissioner for public administration is
14 implicated in the public interest disclosure—the
15 ombudsman; and
- 16 (c) for any public interest disclosure—the ombudsman.

17 *Note* The ombudsman cannot be implicated in a public interest
18 disclosure under this Act because the ombudsman is not a
19 government entity (see s 9 (2)).

- 20 (2) However, if under subsection (1) there is more than 1 supervisor for
21 a public interest disclosure, the supervisors must decide which of
22 them is to be the *supervisor* for the disclosure for part 4
23 (Investigating a public interest disclosure) and part 5 (Completing
24 an investigation).

1 **Part 3** **Making a public interest**
2 **disclosure**

3 **14** **Definitions—pt 3**

4 In this Act:

5 *discloser*—see section 15.

6 *supervisor*, for a public interest disclosure—see section 13.

7 **15** **Making public interest disclosure**

8 (1) A person (the *discloser*) may make a public interest disclosure
9 orally or in writing.

10 (2) If a public interest disclosure is made orally, the receiver must make
11 a written record of the disclosure.

12 *Note* If a form is approved under s 69 for this provision, the form must be
13 used.

14 **16** **Receiver's action after public interest disclosure made**

15 After receiving a public interest disclosure from a discloser, the
16 receiver must, if practicable, do the following things:

17 (a) if the discloser has not told the receiver the discloser's name—

18 (i) ask the discloser for the discloser's name; and

19 (ii) if the discloser does not tell the receiver the discloser's
20 name—tell the discloser that an anonymous public
21 interest disclosure need not be investigated;

22 *Note* Under s 25 (b), the investigator may refuse to investigate,
23 or end the investigation of, anonymous disclosures.

- 1 (b) if the discloser has not told the receiver the discloser's contact
2 details—
- 3 (i) ask the discloser for the discloser's contact details; and
- 4 (ii) if the discloser does not tell the receiver the discloser's
5 contact details—tell the discloser that the discloser need
6 not be told about the progress of any investigation carried
7 out because of the public interest disclosure if the
8 discloser does not tell the receiver the discloser's contact
9 details;
- 10 (c) ask the discloser if the discloser is making the public interest
11 disclosure honestly and without recklessness about the truth of
12 the public interest information contained in the disclosure;
- 13 (d) tell the discloser—
- 14 (i) that an investigator is not required to investigate the
15 public interest disclosure if the investigator is satisfied
16 that the discloser has made the disclosure dishonestly or
17 with recklessness about the truth of the public interest
18 information contained in the disclosure; and
- 19 *Note* Under s 25 (d), the investigator may refuse to investigate,
20 or end the investigation of, a disclosure made dishonestly
21 or recklessly.
- 22 (ii) that giving false or misleading information is an offence
23 against the Criminal Code, section 338 (Giving false or
24 misleading information); and
- 25 (iii) about the protection provided under section 49 (1)
26 (Immunity for discloser), how the discloser may lose the
27 protection under section 49 (2) and (3) and that, if the
28 discloser loses the protection, the investigator may end
29 the investigation of the public interest disclosure.
- 30 *Note* Under s 25 (e), the investigator may refuse to investigate,
31 or end an investigation, if the discloser loses immunity
32 under s 49.

1 **17 Receiver must tell each implicated government entity and**
2 **supervisor**

- 3 (1) As soon as practicable after receiving a public interest disclosure,
4 the receiver must give a copy of the disclosure to—
- 5 (a) the declared contact person for, or the CEO of, each implicated
6 government entity; and
- 7 (b) each supervisor for the public interest disclosure.
- 8 (2) However, this section does not require more than 1 copy of the
9 public interest disclosure to be given to a particular person.

10 **18 Receiver must record public interest disclosure**

- 11 (1) As soon as practicable after receiving a public interest disclosure,
12 the receiver must—
- 13 (a) make a record of the public interest disclosure in the public
14 interest disclosures register; or
- 15 (b) tell the administering agency about receiving the public interest
16 disclosure.
- 17 (2) If a receiver tells the administering agency about receiving a public
18 interest disclosure, the administering agency must record the receipt
19 of the disclosure in the public interest disclosures register.

20 *Note* If a form is approved under s 69 for this provision, the form must be
21 used.

1 **Part 4** **Investigating a public interest**
2 **disclosure**

3 **19** **Definitions—pt 4**

4 In this Act:

5 *entity-appointed investigator*—see section 20 (2).

6 *investigation notice*—see section 33.

7 *investigator*, for a public interest disclosure—see section 20.

8 *refusal notice*—see section 26.

9 *supervisor-appointed investigator*—see section 20 (3).

10 **20** **Meaning of *investigator* for a public interest disclosure**

- 11 (1) For this Act, the *investigator* for a public interest disclosure is—
- 12 (a) if there is an entity-appointed investigator for the public
13 interest disclosure—
- 14 (i) the entity-appointed investigator; or
- 15 (ii) if the supervisor for the public interest disclosure is
16 satisfied, on reasonable grounds, that the supervisor
17 should be the investigator for the disclosure—the
18 supervisor; or
- 19 (b) if there is no entity-appointed investigator for the public
20 interest disclosure—the supervisor for the disclosure.
- 21 (2) The CEO of an implicated government entity may appoint someone
22 (an *entity-appointed investigator*) to investigate a public interest
23 disclosure.

- 1 (3) If the supervisor for a public interest disclosure is the investigator
2 for a public interest disclosure, the supervisor may appoint someone
3 (a *supervisor-appointed investigator*) to be the investigator for a
4 public interest disclosure for the supervisor.

5 *Note 1* For the making of appointments (including acting appointments), see
6 the Legislation Act, pt 19.3.

7 *Note 2* In particular, a person may be appointed for a particular provision of a
8 law (see Legislation Act, s 7 (3)) and an appointment may be made by
9 naming a person or nominating the occupant of a position (see s 207).

10 *Note 3* The person appointed need not be a public servant.

11 **21 Appointed investigators**

- 12 (1) An appointed investigator for a public interest disclosure may
13 exercise all the functions of an investigator under this Act.

- 14 (2) If an appointed investigator has a material interest in an issue being
15 investigated, or about to be investigated, by the appointed
16 investigator, the appointed investigator must disclose the nature of
17 the interest to the person who appointed the appointed investigator
18 as soon as practicable after the relevant facts come to the appointed
19 investigator's knowledge.

20 *Note 1* *Material interest* is defined in s (3). The definition of *indirect interest*
21 in s (3) applies to the definition of *material interest*.

22 *Note 2* The appointer's power to make the appointment includes the power to
23 suspend the appointee or to end the appointment (see Legislation Act,
24 s 208).

- 25 (3) In this section:

26 *appointed investigator* means—

- 27 (a) an entity-appointed investigator; or
28 (b) a supervisor-appointed investigator.

1 **associate**, of a person, means—

2 (a) the person's business partner; or

3 (b) a close friend of the person; or

4 (c) a family member of the person.

5 **executive officer**, of a corporation, means a person (however
6 described) who is concerned with, or takes part in, the corporation's
7 management, whether or not the person is a director of the
8 corporation.

9 **indirect interest**—without limiting the kinds of indirect interests a
10 person may have, a person has an **indirect interest** in an issue if any
11 of the following has an interest in the issue:

12 (a) an associate of the person;

13 (b) a corporation if the corporation has not more than
14 100 members and the person, or an associate of the person, is a
15 member of the corporation;

16 (c) a subsidiary of a corporation mentioned in paragraph (b);

17 (d) a corporation if the person, or an associate of the person, is an
18 executive officer of the corporation;

19 (e) the trustee of a trust if the person, or an associate of the person,
20 is a beneficiary of the trust;

21 (f) a member of a firm or partnership if the person, or an associate
22 of the person, is a member of the firm or partnership;

23 (g) someone else carrying on a business if the person, or an
24 associate of the person, has a direct or indirect right to
25 participate in the profits of the business.

26 **material interest**—an appointed investigator has a **material interest**
27 in an issue if the appointed investigator has—

28 (a) a direct or indirect financial interest in the issue; or

- 1 (b) a direct or indirect interest of any other kind if the interest
2 could conflict with the proper exercise of the appointed
3 investigator's functions in relation to the appointed
4 investigator's investigation of the issue.

5 **22 Investigator must give contact details to discloser**

- 6 (1) As soon as practicable after a public interest disclosure is made, the
7 investigator for the disclosure must tell the discloser—
8 (a) that the investigator is the investigator for the public interest
9 disclosure; and
10 (b) how the discloser may contact the investigator about the public
11 interest disclosure; and
12 (c) if the investigator is not the supervisor for the public interest
13 disclosure—who the supervisor for the disclosure is.
14 (2) This section does not apply if the discloser has not told the receiver
15 the discloser's name and contact details.

16 **23 Investigator must investigate public interest disclosure**

- 17 (1) The investigator for a public interest disclosure must investigate the
18 disclosure.
19 (2) This section is subject to the following sections:
20 • section 24 (Investigator must refuse to investigate or end
21 investigation)
22 • section 25 (Investigator may refuse to investigate or end
23 investigation).

24 *Note* If a disclosure is not a public interest disclosure as defined in s 7, there
25 is no obligation on an investigator to investigate the disclosure.

1 **24** **Investigator must refuse to investigate or end**
2 **investigation**

3 The investigator for a public interest disclosure must refuse to
4 investigate, or must end the investigation of, the disclosure if
5 satisfied that—

- 6 (a) the public interest information in the public interest disclosure
7 is subject to legal professional privilege and the discloser is not
8 authorised to waive the privilege; or
- 9 (b) the public interest information in the public interest disclosure
10 has already been fully investigated under this Act or in another
11 way; or
- 12 (c) there is a more appropriate way reasonably available to the
13 discloser to deal with the public interest information in the
14 public interest disclosure.

15 **Examples for par (b)**

- 16 1 the public interest disclosure alleges discrimination and the allegation has
17 already been investigated under the *Discrimination Act 1991*
- 18 2 the public interest disclosure alleges improper behaviour by a government
19 agency and the allegation has already been investigated by the commissioner
20 for public administration under the *Public Sector Management Act 1994*
- 21 3 the public interest disclosure raises a matter of privacy and the matter has
22 already been investigated under the *Privacy Act 1988 (Cwlth)*
- 23 4 the public interest disclosure alleges a crime has been committed and the
24 allegation has already been investigated by the police

25 **Examples for par (c)**

- 26 1 the public interest disclosure raises issues about a doctor employed by the
27 Territory and the issues would be more appropriately dealt with under the
28 *Health Professionals Act 2004*
- 29 2 the public interest disclosure raises an occupational health and safety issue
30 and the issue would be more appropriately dealt with under the *Occupational*
31 *Health and Safety Act 1989*
- 32 3 the public interest disclosure raises issues about a government official's
33 behaviour and the issues would be more appropriately dealt with under
34 provisions in the government entity's certified agreement

Part 4 Investigating a public interest disclosure

Section 25

1 4 the public interest disclosure alleges environmental harm has been
2 committed and the allegation would be more appropriately dealt with by the
3 commissioner for the environment

4 *Note 1* An example is part of the Act, is not exhaustive and may extend, but
5 does not limit, the meaning of the provision in which it appears (see
6 Legislation Act, s 126 and s 132).

7 *Note 2* The investigator's decision may be reviewed under s 27.

8 **25 Investigator may refuse to investigate or end**
9 **investigation**

10 The investigator for a public interest disclosure may refuse to
11 investigate, or may end the investigation of, the disclosure if
12 satisfied that—

- 13 (a) the discloser has withdrawn the public interest disclosure; or
14 (b) the discloser has not told the receiver the discloser's name and
15 contact details; or
16 (c) the public interest information in the public interest disclosure
17 is trivial or insubstantial; or
18 (d) the discloser has made the public interest disclosure
19 dishonestly or with recklessness about the truth of the public
20 interest information in the disclosure; or
21 (e) the discloser is not eligible for the protections provided under
22 section 49 (Immunity for discloser); or
23 (f) investigation, or further investigation, of the public interest
24 disclosure is not warranted having regard to all the
25 circumstances.

26 *Note* The investigator's decision may be reviewed under s 27.

1 **26** **Investigator must tell discloser of refusal or ending of**
2 **investigation**

3 (1) This section applies if the investigator for a public interest
4 disclosure refuses to investigate, or ends the investigation of, a
5 public interest disclosure under—

6 (a) section 24 (Investigator must refuse to investigate or end
7 investigation); or

8 (b) section 25 (Investigator may refuse to investigate or end
9 investigation).

10 (2) The investigator must give the discloser a written notice (a *refusal*
11 *notice*) telling the discloser—

12 (a) that the investigator is refusing to investigate, or ending the
13 investigation of, the public interest disclosure under section 24
14 or section 25; and

15 (b) the ground mentioned in section 24 or section 25 for the
16 investigator's decision and the reasons for making the decision
17 on that ground; and

18 (c) either—

19 (i) if the investigator is the supervisor for the public interest
20 disclosure—that the decision is not reviewable under the
21 *Administrative Appeals Tribunal Act 1989*; or

22 (ii) if the investigator is not the supervisor for the public
23 interest disclosure—that the discloser may, not later than
24 21 days after the day the refusal notice is given to the
25 discloser, apply to the supervisor for review of the
26 investigator's decision.

27 (3) However, the investigator must not give the discloser informant
28 identifying information.

29 *Note* **Informant identifying information** is defined in s 60.

1 (4) If the investigator is not the supervisor for the public interest
2 disclosure, the investigator must also give a copy of the refusal
3 notice to the supervisor for the disclosure.

4 (5) This section does not apply if the discloser has not told the receiver
5 the discloser's name and contact details.

6 **27 Discloser may appeal refusal or ending to supervisor**

7 (1) This section applies if—

8 (a) the investigator for a public interest disclosure has given the
9 discloser a refusal notice for the investigation of the disclosure;
10 and

11 (b) the investigator is not the supervisor for the public interest
12 disclosure.

13 (2) The discloser may, not later than 21 days after the day the refusal
14 notice is given to the discloser, apply to the supervisor for the public
15 interest disclosure for review of the investigator's decision to refuse
16 to investigate, or end the investigation of, the disclosure.

17 (3) The making of an application under this section does not affect the
18 operation of the decision.

19 **28 Supervisor must review investigator's refusal or ending**

20 (1) On application under section 27, the supervisor for a public interest
21 disclosure must review the decision of the investigator of the
22 disclosure to refuse to investigate, or end the investigation of, the
23 disclosure.

24 (2) After reviewing the decision, the supervisor must—

25 (a) confirm the decision; or

26 (b) amend the decision; or

27 (c) set aside the decision and substitute a new decision.

29 Supervisor must tell discloser about decision

(1) After making a decision under section 28 (2), the supervisor must give the discloser a written notice (a *review notice*) telling the discloser—

(a) what the supervisor's decision is; and

(b) the reasons for the supervisor's decision; and

(c) that the supervisor's decision is not reviewable under the *Administrative Appeals Tribunal Act 1989*.

(2) However, the review notice must not include informant identifying information.

Note *Informant identifying information* is defined in s 60.

(3) This section does not apply if the discloser has not told the receiver the discloser's name and contact details.

30 Investigator must tell discloser about progress

(1) During an investigation, the investigator of a public interest disclosure must tell the discloser about the progress of the investigation at least once every 3 months.

(2) However, the investigator must not give the discloser—

(a) informant identifying information; or

Note *Informant identifying information* is defined in s 60.

(b) information that the investigator is satisfied would be likely to adversely affect the investigation.

(3) This section does not apply if the discloser has not told the receiver the discloser's name and contact details.

1 **31 Investigator may ask anyone for information**

- 2 (1) The investigator of a public interest disclosure may ask anyone to
3 give the investigator information, including protected information,
4 relevant to the investigation of the disclosure.

5 *Note* **Protected information** is defined in s 56.

- 6 (2) A government entity or government official must promptly comply
7 with a request made to the entity or official.

- 8 (3) When asking the discloser for information, the investigator must tell
9 the discloser that failure to comply with the request before the end
10 of 14 days after the day it is made disqualifies the discloser from
11 protection under section 49 (Immunity for discloser).

- 12 (4) When asking anyone for information, the investigator must tell the
13 person that giving false or misleading information is an offence
14 against the Criminal Code, section 338 (Giving false or misleading
15 information).

16 *Note 1* It is also an offence to obstruct, hinder or intimidate an investigator in
17 the exercise of his or her functions under this Act (see the Criminal
18 Code, s 361 and s 363).

19 *Note 2* The identity of a person who gives information to an investigator under
20 this section is protected (see pt 7).

21 **32 Protection of people giving information**

- 22 (1) If someone gives information honestly and without recklessness to
23 an investigator under section 31—

24 (a) the giving of the information is not—

- 25 (i) a breach of confidence; or
26 (ii) a breach of professional etiquette or ethics; or
27 (iii) a breach of a rule of professional conduct; and

28 (b) the person does not incur civil or criminal liability only
29 because of the giving of the information; and

1 (c) the person is not liable to disciplinary action, or dismissal,
2 (however described) only because of the giving of the
3 information.

4 (2) This section does not apply to a person who is a discloser.

5 *Note* Disclosers are protected under s 49.

6 **33 Investigator must give people opportunity to explain**

7 (1) This section applies if, during the investigation of a public interest
8 disclosure, the investigator suspects that a government entity or
9 government official may have been, may be, or may be in the
10 foreseeable future likely to be, engaging in conduct contrary to the
11 public interest.

12 *Note* For examples of conduct contrary to the public interest, see s 8.

13 (2) The investigator must either—

14 (a) give the person a written notice (an *investigation notice*)
15 telling the person—

16 (i) of the investigator's suspicion; and

17 (ii) the nature of the suspected conduct; and

18 (iii) that the person may, not later than 21 days after the day
19 the investigation notice is given to the person, make a
20 submission to the investigator about the conduct; or

21 (b) refer the public interest disclosure to the chief police officer
22 under section 34.

23 (3) An investigation notice must not include sensitive information.

24 *Note* *Sensitive information* is defined in s 57.

25 (4) The investigator must consider any submission made by the person
26 to the investigator before the end of the 21-day period.

- 1 **34 Investigation may be referred to police**
- 2 (1) The investigator for a public interest disclosure may refer the
- 3 disclosure to the chief police officer if satisfied, on reasonable
- 4 grounds, that the public interest information in the disclosure tends
- 5 to show that a government entity or government official—
- 6 (a) has engaged in conduct that is an offence against a territory
- 7 law; or
- 8 (b) is engaging in conduct that is an offence against a territory law;
- 9 or
- 10 (c) is, in the foreseeable future, likely to engage in conduct that is
- 11 an offence against a territory law.
- 12 (2) After the public interest disclosure is referred to the chief police
- 13 officer, the chief police officer must—
- 14 (a) investigate the public interest disclosure; or
- 15 (b) refuse to investigate the public interest disclosure.
- 16 (3) If the chief police officer refuses to investigate the public interest
- 17 disclosure, the chief police officer must tell the investigator—
- 18 (a) of the refusal; and
- 19 (b) the chief police officer's reasons for refusing to investigate the
- 20 public interest disclosure.
- 21 (4) If the chief police officer investigates the public interest disclosure,
- 22 the chief police officer must, when the investigation ends, tell the
- 23 investigator of the outcome of the chief police officer's
- 24 investigation.
- 25 (5) If a public interest disclosure is referred to the chief police officer,
- 26 the investigation of the disclosure by the investigator is suspended
- 27 until the chief police officer tells the investigator of the chief police
- 28 officer's refusal to investigate or the outcome of the investigation.

-
- 1 **35** **Investigator must tell discloser about police investigation**
- 2 (1) If the investigator for a public interest disclosure refers the
- 3 disclosure to the chief police officer under section 34 (1), the
- 4 investigator must tell the discloser that the disclosure has been
- 5 referred to the chief police officer.
- 6 (2) If the chief police officer tells the investigator, under section 34 (3),
- 7 that the chief police officer is refusing to investigate the public
- 8 interest disclosure, the investigator must tell the discloser of the
- 9 chief police officer's refusal.
- 10 (3) If the chief police officer tells the investigator, under section 34 (4),
- 11 of the outcome of the chief police officer's investigation, the
- 12 investigator must tell the discloser of the outcome.
- 13 (4) However, the investigator must not give the discloser—
- 14 (a) informant identifying information; or
- 15 *Note* ***Informant identifying information*** is defined in s 60.
- 16 (b) information that the investigator suspects on reasonable
- 17 grounds may adversely affect a police investigation or a
- 18 proceeding arising out of a police investigation.
- 19 **Example**
- 20 The investigator is likely to suspect on reasonable grounds that giving the
- 21 discloser certain information may adversely affect a police investigation if
- 22 the chief police officer tells the investigator that it may.
- 23 *Note* An example is part of the Act, is not exhaustive and may extend,
- 24 but does not limit, the meaning of the provision in which it
- 25 appears (see Legislation Act, s 126 and s 132).
- 26 (5) This section does not apply if the discloser has not told the receiver
- 27 the discloser's name and contact details.

1 **Part 5** **Completing an investigation**

2 **36** **Definitions—pt 5**

3 In this part:

4 *action report*—see section 47.

5 *completed*, for an investigation of a public interest disclosure—see
6 section 38, section 39 and section 40.

7 *investigation report*—see section 42.

8 **37** **Investigator must complete investigation promptly**

9 The investigator for a public interest disclosure must carry out and
10 complete the investigation promptly.

11 **38** **Completion of investigation—fully investigated**

12 An investigation of a public interest disclosure is *completed* if the
13 investigator—

- 14 (a) has investigated the public interest disclosure; and
- 15 (b) if the investigator has given an investigation notice to a
16 person—has considered any submission made by the person to
17 the investigator not later than 21 days after the day the
18 investigation notice was given to the person; and
- 19 (c) has considered all information relevant to the public interest
20 disclosure that is reasonably available to, or obtainable by, the
21 investigator; and
- 22 (d) is satisfied that further reasonable investigation would not
23 reveal further information relevant to the public interest
24 disclosure; and

- 1 (e) has formed a conclusion, on reasonable grounds, that—
- 2 (i) an implicated government entity or a government official
- 3 for an implicated government entity has been, is, or is in
- 4 the foreseeable future likely to be, engaging in conduct
- 5 contrary to the public interest; or
- 6 (ii) an implicated government entity or a government official
- 7 for an implicated government entity has not been, is not,
- 8 or is not in the foreseeable future likely to be, engaging in
- 9 conduct contrary to the public interest; or
- 10 (iii) there is no reasonable likelihood of the investigator being
- 11 able to find out whether an implicated government entity
- 12 or a government official for an implicated government
- 13 entity has been, is, or is in the foreseeable future likely to
- 14 be, engaging in conduct contrary to the public interest.

15 *Note* For examples of conduct contrary to the public interest, see s 8.

16 **39 Completion of investigation—investigation refused or**

17 **ended**

18 An investigation of a public interest disclosure is also *completed*

19 if—

- 20 (a) the investigator refuses to investigate, or ends the investigation
- 21 of, the public interest disclosure under—
- 22 (i) section 24 (Investigator must refuse to investigate or end
- 23 investigation); or
- 24 (ii) section 25 (Investigator may refuse to investigate or end
- 25 investigation); and
- 26 (b) the investigator has, if required, given the discloser a refusal
- 27 notice for the investigation; and

28 *Note* Refusal notices are given under s 26.

- 1 (c) if a refusal notice has been given to the discloser and the
2 investigator is not the supervisor for the public interest
3 disclosure—
- 4 (i) the discloser has not applied for review of the
5 investigator’s decision before the end of the 21-day
6 period after the day the refusal notice is given to the
7 discloser; or
- 8 (ii) the supervisor has confirmed the investigator’s decision
9 and, if required, told the discloser of the confirmation.
- 10 *Note* The discloser may appeal the decision under s 27. The supervisor
11 must review the decision under s 28 and must notify the discloser
12 under s 29.

13 **40 Completion of investigation—police investigation**

14 An investigation of a public interest disclosure is also *completed*
15 if—

- 16 (a) the investigator has referred the public interest disclosure to the
17 chief police officer under section 34 (Investigation may be
18 referred to police); and
- 19 (b) the chief police officer has told the investigator—
- 20 (i) that the chief police officer is refusing to investigate the
21 public interest disclosure under section 34; or
- 22 (ii) of the outcome of the chief police officer’s investigation
23 under section 34 (4); and
- 24 (c) the investigator has, if required, told the discloser about the
25 refusal or outcome under section 35 (Investigator must tell
26 discloser about police investigation).

-
- 1 **41 Completion of investigation to be recorded**
- 2 (1) As soon as practicable after completing the investigation of a public
3 interest disclosure, the investigator for the disclosure must record in
4 the public interest disclosures register, or tell the administering
5 agency—
- 6 (a) the date when the investigation was completed; and
- 7 (b) whether it was completed under section 38, section 39 or
8 section 40.
- 9 (2) If the investigator gives the administering agency the information
10 mentioned in subsection (1) (a) and (b), the administering agency
11 must record the information in the public disclosures register.
- 12 *Note* If a form is approved under s 69 for this provision, the form must be
13 used.
- 14 **42 Investigator must report on completed investigation**
- 15 (1) After an investigation of a public interest disclosure is completed,
16 the investigator must give a report (an *investigation report*) about
17 the investigation to—
- 18 (a) the CEO for each implicated government entity; and
- 19 (b) if the investigator is not the supervisor for the public interest
20 disclosure—the supervisor for the disclosure.
- 21 (2) The investigator must give the investigation report to the people
22 mentioned in subsection (1) as soon as practicable, but no later than
23 1 month after the investigation is completed.
- 24 (3) The supervisor for the public interest disclosure may extend the time
25 mentioned in subsection (2).
- 26 *Note* A person may apply to the supervisor for the time to be extended, and
27 the supervisor may extend the time, even though the time has ended
28 (see Legislation Act, s 151C).

- 1 **43 Investigation report must include all relevant information**
- 2 (1) An investigation report must include all information relevant to the
- 3 investigation of the public interest disclosure that is known to the
- 4 investigator at the completion of the investigation.
- 5 (2) An investigation report may include protected information.
- 6 *Note* **Protected information** includes *sensitive information* (see s 56).
- 7 **44 Investigation report must include conclusions etc**
- 8 (1) If an investigation of a public interest disclosure is completed under
- 9 section 38 (*Completion* of investigation—fully investigated)
- 10 because the investigator formed a conclusion mentioned in
- 11 section 38 (e), the investigation report must include—
- 12 (a) the conclusion; and
- 13 (b) the investigator’s reasons for forming the conclusion.
- 14 (2) If an investigation of a public interest disclosure is completed under
- 15 section 39 (*Completion* of investigation—investigation refused or
- 16 ended) the investigation report must include—
- 17 (a) a statement to that effect; and
- 18 (b) the investigator’s reasons for the refusal or ending.
- 19 (3) If an investigation of a public interest disclosure is completed under
- 20 section 40 (*Completion* of investigation—police investigation) the
- 21 investigation report must include—
- 22 (a) a statement to that effect; and
- 23 (b) either the chief police officer’s refusal to investigate or the
- 24 outcome of the chief police officer’s investigation.

- 1 (4) However, the investigator must not include in the investigation
2 report information that the investigator suspects on reasonable
3 grounds may adversely affect a police investigation or a proceeding
4 arising out of a police investigation.

5 **Example**

6 The investigator is likely to suspect on reasonable grounds that giving the
7 discloser certain information may adversely affect a police investigation if the
8 chief police officer tells the investigator that it may.

9 *Note* An example is part of the Act, is not exhaustive and may extend, but
10 does not limit, the meaning of the provision in which it appears
11 (see Legislation Act, s 126 and s 132).

12 **45 Investigation report must include recommendations**

- 13 (1) An investigation report must include 1 of the following
14 recommendations to the CEO of each implicated government entity:

15 (a) that the CEO take stated action (against a stated government
16 official or otherwise);

17 (b) that the CEO take no action against a stated government
18 official, or against anyone, about the public interest disclosure.

19 **Examples of action**

20 1 revision of a stated procedures manual

21 2 provision of training to stated government officials

22 *Note* An example is part of the Act, is not exhaustive and may extend, but
23 does not limit, the meaning of the provision in which it appears (see
24 Legislation Act, s 126 and s 132).

- 25 (2) An investigation report may include a recommendation to the CEO
26 of an implicated government entity that the CEO take stated action
27 to prevent, or reduce the likelihood of, future conduct contrary to the
28 public interest happening.

29 *Note* For examples of conduct contrary to the public interest, see s 8.

- 1 **46 CEO to make decision on investigation report**
- 2 (1) This section applies if a CEO of a government entity is given an
- 3 investigation report about a public interest disclosure.
- 4 (2) The CEO must—
- 5 (a) consider the investigation report; and
- 6 (b) decide whether to take—
- 7 (i) any action recommended in the investigation report; and
- 8 (ii) other action to prevent, or reduce the likelihood of,
- 9 conduct that is contrary to the public interest happening in
- 10 the future; and
- 11 (iii) other action to prevent, or reduce the likelihood of,
- 12 detrimental action being taken against the discloser; and
- 13 *Note Detrimental action* is defined in s 50.
- 14 (iv) any other action the CEO considers appropriate.
- 15 **47 CEO to tell discloser and supervisor of decision on**
- 16 **investigation report**
- 17 (1) This section applies if a CEO of a government entity—
- 18 (a) is given an investigation report about a public interest
- 19 disclosure; and
- 20 (b) decides under section 46 to take action on the report.
- 21 (2) The CEO must give the following people a written report about the
- 22 decision (an *action report*):
- 23 (a) the discloser;
- 24 (b) the supervisor.

1 (3) However, the CEO must not give the discloser informant identifying
2 information.

3 *Note* **Informant identifying information** is defined in s 60.

4 (4) Subsection (1) (a) does not apply if the discloser has not told the
5 receiver the discloser's name and contact details.

6 **48 Supervisor may tell Chief Minister if action not taken**

7 (1) This section applies if—

8 (a) a CEO of a government entity has been given an investigation
9 report about a public interest disclosure; and

10 (b) the CEO has not, within a reasonable time after receiving the
11 investigation report, taken action that is, in the supervisor's
12 opinion, adequate and appropriate in the circumstances about
13 the matters and recommendations in the investigation report.

14 (2) The supervisor must tell the Chief Minister about the investigation
15 report and the CEO's actions.

16 (3) If the supervisor tells the Chief Minister under subsection (2), the
17 supervisor must give the Chief Minister a copy of—

18 (a) the investigation report; and

19 (b) the action report (if any).

1 **Part 6 Protection for disclosers**

2 **49 Immunity for discloser**

3 (1) If a discloser makes a public interest disclosure honestly and
4 without recklessness—

5 (a) the making of the public interest disclosure is not—

6 (i) a breach of confidence; or

7 (ii) a breach of professional etiquette or ethics; or

8 (iii) a breach of a rule of professional conduct; and

9 (b) the discloser does not incur civil or criminal liability only
10 because of the making of the public interest disclosure; and

11 (c) the person is not liable to disciplinary action, or dismissal,
12 (however described) only because of the making of the public
13 interest disclosure.

14 (2) Subsection (1) does not apply to a discloser if the investigator of the
15 public interest disclosure asks the discloser to give the investigator
16 information under section 31 (Investigator may ask anyone for
17 information) and the discloser fails to comply with the request
18 before the end of 14 days after the day it is made.

19 (3) Subsection (1) also does not apply to a discloser if the discloser—

20 (a) divulges public interest information in the public interest
21 disclosure or information that would allow public interest
22 information in the disclosure to be worked out; and

23 (b) divulges the information other than under this Act or another
24 Act.

1 **50** **What is *detrimental action*?**

2 For this Act, a person takes *detrimental action* against someone else
3 if the person engages in conduct that involves—

- 4 (a) discriminating against the other person by treating, or
5 proposing to treat, the other person unfavourably; or
6 (b) harassing or intimidating the other person; or
7 (c) injuring the other person; or
8 (d) damaging the other person’s property.

9 *Note* **Victim may have action under Human Rights Commission Act**

10 If someone takes, or threatens to take, detrimental action against
11 someone else with the intention of either deterring someone from, or
12 punishing someone for, making a public interest disclosure, the victim
13 may be able to take action under the *Human Rights Commission*
14 *Act 2005*, s 42 (1) (d) (see also *Discrimination Act 1991*, s 68A).

15 Under the *Discrimination Act 1991*, section 99A (2), if the
16 discrimination tribunal is satisfied that the respondent has engaged in
17 unlawful conduct, the tribunal must make 1 or more of the following
18 orders:

- 19 (a) that the respondent not repeat or continue the unlawful conduct;
20 (b) that the respondent perform a stated reasonable act to redress any
21 loss or damage suffered by a person because of the unlawful
22 conduct;
23 (c) except if the complaint has been dealt with as a representative
24 complaint—that the respondent pay to a person a stated amount
25 by way of compensation for any loss or damage suffered by the
26 person because of the unlawful conduct;
27 (d) if the complaint is about unlawful discrimination under the
28 *Discrimination Act 1991*, s 68A (Detrimental action against
29 public interest disclosers) by the respondent against a government
30 official and the government official agrees to the order—that the
31 government official be relocated to another position in a
32 government entity.

1 **51 Offence—detrimental action to deter discloser**

- 2 (1) A person commits an offence if—
- 3 (a) the person takes detrimental action against someone else; and
- 4 (b) the person takes the action with the intention of deterring that
- 5 person or another person from making a public interest
- 6 disclosure.

7 Maximum penalty: 100 penalty units, imprisonment for 1 year or

8 both.

- 9 (2) A person commits an offence if—
- 10 (a) the person threatens to take detrimental action against someone
- 11 else; and
- 12 (b) the person makes the threat with the intention of deterring that
- 13 person or another person from making a public interest
- 14 disclosure.

15 Maximum penalty: 100 penalty units, imprisonment for 1 year or

16 both.

- 17 (3) In a prosecution for an offence against this section, it is not
- 18 necessary for the prosecution to prove that anyone—
- 19 (a) actually intended to make a public interest disclosure; or
- 20 (b) is actually deterred from making a public interest disclosure.

21 **52 Offence—detrimental action to punish discloser**

- 22 (1) A person commits an offence if—
- 23 (a) the person takes detrimental action against someone else; and

1 (b) the person takes the action with the intention of punishing that
2 person or another person for making a public interest
3 disclosure.

4 Maximum penalty: 100 penalty units, imprisonment for 1 year or
5 both.

6 (2) A person commits an offence if—

7 (a) the person threatens to take detrimental action against someone
8 else; and

9 (b) the person makes the threat with the intention of punishing that
10 person or someone else for making a public interest disclosure.

11 Maximum penalty: 100 penalty units, imprisonment for 1 year or
12 both.

13 (3) In a prosecution for an offence against this section, it is not
14 necessary for the prosecution to prove that anyone—

15 (a) actually made a public interest disclosure; or

16 (b) is actually punished for making a public interest disclosure.

17 **53 Victim of detrimental action may sue for damages**

18 (1) This section applies if a person (the *perpetrator*) takes, or threatens
19 to take, detrimental action against someone else (the *victim*) with the
20 intention of—

21 (a) deterring someone from making a public interest disclosure; or

22 (b) punishing someone for making a public interest disclosure.

23 (2) The perpetrator is liable in damages to anyone who suffers
24 detriment as a result of the perpetrator taking detrimental action, or
25 threatening to take detrimental action, against the victim.

26 (3) The damages may be recovered in a proceeding as for a tort in any
27 court of competent jurisdiction.

- 1 (4) Any remedy that may be given by a court for a tort, including
2 exemplary damages, may be given by a court in a proceeding under
3 this section.
- 4 (5) However, if the discrimination tribunal has ordered that the
5 perpetrator pay a stated amount by way of compensation under the
6 *Discrimination Act 1991*, section 99A (2) (c) (Decision after
7 hearing—injunction, compensation etc) in relation to the perpetrator
8 taking, or threatening to take, detrimental action against the victim,
9 the court must reduce the amount of damages that it would
10 otherwise award to the person by the amount of the compensation.
- 11 (6) For this section, it does not matter whether anyone—
- 12 (a) actually intended to make a public interest disclosure; or
- 13 (b) actually made a public interest disclosure; or
- 14 (c) is actually deterred from making a public interest disclosure; or
- 15 (d) is actually punished for making a public interest disclosure.

1 (2) Without limiting subsection (1), *protected information* includes
2 sensitive information.

3 **57 What is *sensitive information*?**

4 In this Act:

5 *sensitive information* is—

- 6 (a) public interest disclosure information; or
7 (b) discloser identifying information; or
8 (c) informant identifying information; or
9 (d) information prescribed by regulation for this definition.

10 **58 What is *public interest disclosure information*?**

11 In this Act:

12 *public interest disclosure information* means—

- 13 (a) public interest information in—
14 (i) a public interest disclosure; or
15 (ii) a record of a public interest disclosure made under
16 section 15 (Making public interest disclosure); or
17 (b) information that would allow public interest information in a
18 public interest disclosure, or a record of a public interest
19 disclosure, to be worked out.

20 **59 What is *discloser identifying information*?**

21 In this Act:

22 *discloser identifying information* means information that—

- 23 (a) identifies a discloser; or
24 (b) would allow the identity of a discloser to be worked out.

1 **60** **What is *informant identifying information*?**

2 In this Act:

3 ***informant identifying information*** means information that—

- 4 (a) identifies a person who gave information to an investigator
5 under section 31; or
6 (b) would allow the identity of the person to be worked out.

7 **61** **Offence—secrecy of protected information**

8 (1) An information holder commits an offence if the information
9 holder—

- 10 (a) makes a record of protected information; and
11 (b) is reckless about whether the information is protected
12 information.

13 Maximum penalty: 50 penalty units, imprisonment for 6 months or
14 both.

15 (2) An information holder commits an offence if the information
16 holder—

- 17 (a) does something that divulges protected information; and
18 (b) is reckless about whether—
19 (i) the information is protected information; and
20 (ii) doing the thing would result in the information being
21 divulged to someone else.

22 Maximum penalty: 50 penalty units, imprisonment for 6 months or
23 both.

24 (3) This section is subject to the following sections:

- 25 (a) section 62 (Exception to s 61—information given under this
26 Act);

- 1 (b) section 63 (Exception to s 61—information given under
2 another law);
- 3 (c) section 64 (Exception to s 61—information given with
4 agreement);
- 5 (d) section 65 (Exception to s 61—information given to court or
6 tribunal).

7 **62 Exception to s 61—information given under this Act**

- 8 (1) Section 61 (1) does not apply to the making of a record of protected
9 information if the record is made—
- 10 (a) under this Act; or
- 11 (b) in the exercise of a function, as an information holder, under
12 this Act.
- 13 (2) Section 61 (2) does not apply to the divulging of protected
14 information if the information is divulged—
- 15 (a) under this Act; or
- 16 (b) in the exercise of a function, as an information holder, under
17 this Act.

- 18 *Note* Various provisions of this Act provide for information to be given to
19 people, including:
- 20 • s 17 (Receiver must tell each implicated government entity and
21 supervisor)
- 22 • s 30 (Investigator must tell discloser about progress)
- 23 • s 42 (Investigator must report on completed investigation).

24 **63 Exception to s 61—information given under another law**

- 25 (1) Section 61 (1) does not apply to the making of a record of protected
26 information if—
- 27 (a) the information is not sensitive information; and

- 1 (b) the record is made—
- 2 (i) under another territory law; or
- 3 (ii) in the exercise of a function, as an information holder,
- 4 under another territory law.
- 5 (2) Section 61 (2) does not apply to the divulging of protected
- 6 information if—
- 7 (a) the information is not sensitive information; and
- 8 (b) the information is divulged—
- 9 (i) under another territory law; or
- 10 (ii) in the exercise of a function, as an information holder,
- 11 under another territory law.
- 12 *Note* Other legislation may provide for information to be given to people,
- 13 including the *Freedom of Information Act 1989*, s 10 (but see s 38).

14 **64 Exception to s 61—information given with agreement**

- 15 Section 61 (2) does not apply to the divulging of protected
- 16 information if the information—
- 17 (a) is not sensitive information; and
- 18 (b) is about a person; and
- 19 (c) is divulged with the person's agreement.

20 **65 Exception to s 61—information given to court or tribunal**

- 21 (1) Section 61 (1) does not apply to the making of a record of protected
- 22 information if—
- 23 (a) the record is made for a proceeding in a court or tribunal; and
- 24 (b) for discloser identifying information—the discloser agrees to
- 25 the record being made for a proceeding in a court or tribunal;
- 26 and

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- 1 (c) for informant identifying information—the informant agrees to
2 the record being made for a proceeding in a court or tribunal.
- 3 (2) Section 61 (2) does not apply to the divulging of protected
4 information if—
- 5 (a) the information is divulged for a proceeding in a court or
6 tribunal; and
- 7 (b) for discloser identifying information—the discloser agrees to
8 the information being divulged for a proceeding in a court or
9 tribunal; and
- 10 (c) for informant identifying information—the informant agrees to
11 the information being divulged for a proceeding in a court or
12 tribunal.

- 1 (3) Any liability that would, apart from this section, attach to an official
2 attaches instead to the Territory.

3 *Note* A reference to an Act includes a reference to the statutory instruments
4 made or in force under the Act, including any regulation (see
5 Legislation Act, s 104).

6 **68 Annual report of administering agency**

- 7 (1) Each annual report of the administering agency under the *Annual*
8 *Reports (Government Agencies) Act 2004* must include details of the
9 following for the period covered by the report:
10 (a) the total number of public interest disclosures made;
11 (b) the total number of investigations carried out;
12 (c) the total number of investigations completed, including the
13 total number of investigations completed under—
14 (i) section 38 (*Completion* of investigation—fully
15 investigated); and
16 (ii) section 39 (*Completion* of investigation—investigation
17 refused or ended); and
18 (iii) section 40 (*Completion* of investigation—police
19 investigation);
20 (d) the average time taken for completed investigations;
21 (e) anything else prescribed by regulation for this section.
22 (2) However, the annual report must not include protected information.

23 **69 Approved forms**

- 24 (1) The Minister may, in writing, approve forms for this Act.
25 (2) If the Minister approves a form for a particular purpose, the
26 approved form must be used for that purpose.

27 *Note* For other provisions about forms, see the Legislation Act, s 255.

1 (3) An approved form is a notifiable instrument.

2 *Note* A notifiable instrument must be notified under the Legislation Act.

3 **70 Regulation-making power**

4 The Executive may make regulations for this Act.

5 *Note* A regulation must be notified, and presented to the Legislative
6 Assembly, under the Legislation Act.

1 **Part 20** **Transitional—Public Interest**
2 **Disclosure Act 1994**

3 **100** **Transitional—Act applies to disclosures made after**
4 **commencement**

5 (1) This Act applies to a public interest disclosure made after the
6 commencement of this Act, regardless of when any conduct
7 contrary to the public interest mentioned in the public interest
8 disclosure is alleged to have happened.

9 (2) This section is a law to which the Legislation Act, section 88
10 (Repeal does not end effect of transitional laws etc) applies.

11 **101** **Transitional—Public Interest Disclosure Act 1994 applies**
12 **to disclosures made before commencement**

13 (1) The *Public Interest Disclosure Act 1994* as in force immediately
14 before the commencement of this Act continues to apply to a public
15 interest disclosure made before the commencement of this Act.

16 (2) This section is a law to which the Legislation Act, section 88
17 (Repeal does not end effect of transitional laws etc) applies.

18 **102** **Transitional—no investigation of matters already**
19 **investigated under Public Interest Disclosure Act 1994**

20 (1) In section 24 (b) (Investigator must refuse to investigate or end
21 investigation):

22 *this Act* includes the *Public Interest Disclosure Act 1994*.

23 (2) This section is a law to which the Legislation Act, section 88
24 (Repeal does not end effect of transitional laws etc) applies.

1 **103 Transitional—regulation**

2 (1) A regulation may prescribe transitional matters necessary or
3 convenient to be prescribed because of the enactment of this Act.

4 (2) A regulation may modify this part to make provision in relation to
5 anything that, in the Executive’s opinion, is not, or is not adequately
6 or appropriately, dealt with in this part.

7 (3) A regulation under subsection (2) has effect despite anything
8 elsewhere in this Act.

9 **104 Expiry—pt 20**

10 This part expires 5 years after the day it commences.

1 **Part 21** **Amendments and repeal**

2 **105** **Legislation amended—sch 1**

3 This Act amends the following legislation:

- 4 • *Auditor-General Act 1996*
5 • *Discrimination Act 1991*
6 • *Ombudsman Act 1989*
7 • *Public Sector Management Act 1994.*

8 **106** **Repeal of Public Interest Disclosure Act 1994**

9 The *Public Interest Disclosure Act 1994* A1994-108 is repealed.

1 **Schedule 1** **Consequential amendments**

2 (see s 105)

3 **Part 1.1** **Auditor-General Act 1996**

4 **[1.1] New section 10 (da)**

5 *insert*

6 (da) the functions given to the auditor-general under the *Public*
7 *Interest Disclosure Act 2006*;

8 **Part 1.2** **Discrimination Act 1991**

9 **[1.2] New section 68A**

10 *insert*

11 **68A Detrimental action against public interest disclosers**

12 (1) It is unlawful for a person to take, or threaten to take, detrimental
13 action against someone else with the intention of—

- 14 (a) deterring someone from making a public interest disclosure; or
15 (b) punishing someone for making a public interest disclosure.

16 (2) For this section, it does not matter whether anyone—

- 17 (a) actually intended to make a public interest disclosure; or
18 (b) actually made a public interest disclosure; or
19 (c) is actually deterred from making a public interest disclosure; or
20 (d) is actually punished for making a public interest disclosure.

- 1 (3) In this section:
2 *detrimental action*—see the *Public Interest Disclosure Act 2006*,
3 section 50.
4 *Note* Under the *Public Interest Disclosure Act 2006*, s 50, a person takes
5 detrimental action against someone else if the person engages in
6 conduct that involves any of the following:
7 • discriminating against the person by treating, or proposing to treat,
8 the other person unfavourably
9 • harassing or intimidating the other person
10 • injuring the other person
11 • damaging the other person’s property.

12 **[1.3] Section 71, new note**

13 *insert*

- 14 *Note* But see the *Public Interest Disclosure Act 2006*—
15 • s 51 (Offence—detrimental action to deter discloser)
16 • s 52 (Offence—detrimental action to punish discloser).

17 **[1.4] Section 72, new note**

18 *insert*

- 19 *Note* But see the *Public Interest Disclosure Act 2006*, s 53 (Victim of
20 detrimental action may sue for damages).

21 **[1.5] Section 98 (3) (b)**

22 *substitute*

- 23 (b) the tribunal makes a decision under section 99 (Decision after
24 hearing—dismiss complaint) or section 99A (Decision after
25 hearing—injunction, compensation, etc).

1 **[1.6] Section 99**

2 *substitute*

3 **99 Decision after hearing—dismiss complaint**

- 4 (1) This section applies after the tribunal has heard a complaint.
- 5 (2) The tribunal must dismiss the complaint if the tribunal is satisfied
6 that the complaint—
- 7 (a) is frivolous or vexatious; or
- 8 (b) is not made honestly; or
- 9 (c) lacks substance.
- 10 (3) If the tribunal dismisses the complaint under subsection (2) (a) or
11 (b), the tribunal may, by written notice given to the complainant,
12 order the complainant to pay the respondent a stated amount for the
13 expenses reasonably incurred by the respondent in relation to the
14 hearing.
- 15 (4) An amount mentioned in subsection (3) must be fixed in accordance
16 with the scale of costs applying to a civil proceeding in the
17 Magistrates Court.

18 **99A Decision after hearing—injunction, compensation, etc**

- 19 (1) This section applies after the tribunal has heard a complaint.
- 20 (2) If the tribunal is satisfied that the respondent has engaged in
21 unlawful conduct, the tribunal must make 1 or more of the following
22 orders:
- 23 (a) that the respondent not repeat or continue the unlawful
24 conduct;
- 25 (b) that the respondent perform a stated reasonable act to redress
26 any loss or damage suffered by a person because of the
27 unlawful conduct;

- 1 (c) except if the complaint has been dealt with as a representative
2 complaint—that the respondent pay to a person a stated
3 amount by way of compensation for any loss or damage
4 suffered by the person because of the unlawful conduct;
- 5 (d) if the complaint is about unlawful discrimination under
6 section 68A (Detrimental action against public interest
7 disclosers) by the respondent against a government official and
8 the government official agrees to the order—that the
9 government official be relocated to another position in a
10 government entity.
- 11 (3) An amount ordered to be paid to a person under subsection (2) (c)
12 may include an amount for the expenses reasonably incurred by the
13 person in relation to the hearing.
- 14 (4) An amount mentioned in subsection (3) must be fixed in accordance
15 with the scale of costs applying to a civil proceeding in the
16 Magistrates Court.
- 17 (5) However, if a court has awarded the person damages under the
18 *Public Interest Disclosure Act 2006*, section 53 (Victim of
19 detrimental action may sue for damages) in relation to the
20 respondent taking, or threatening to take, detrimental action against
21 the person, the tribunal must reduce the amount that it would
22 otherwise order to be paid to a person under subsection (2) (c) in
23 relation to the respondent taking, or threatening to take, detrimental
24 action against the person by the amount of the damages.
- 25 (6) In this section:
- 26 **government entity**—see the *Public Interest Disclosure Act 2006*,
27 section 9.
- 28 **government official**—see the *Public Interest Disclosure Act 2006*,
29 section 10.
- 30 **representative complaint** means a complaint that is dealt with by
31 HRC as a representative complaint under the HRC Act, section 71.

1 **Part 1.4 Public Sector Management Act**
2 **1994**

3 **[1.9] Section 9 (q), new example**

4 *insert*

5 **Example of report to appropriate authority**

6 making a public interest disclosure under the *Public Interest Disclosure*
7 *Act 2006*

8 *Note* An example is part of the Act, is not exhaustive and may extend,
9 but does not limit, the meaning of the provision in which it
10 appears (see Legislation Act, s 126 and s 132).

11 **[1.10] Section 20 (1) (c)**

12 *substitute*

- 13 (c) exercise the functions given to the commissioner under the
14 *Public Interest Disclosure Act 2006*; and
15 (d) exercise any other functions given to the commissioner by this
16 Act or another territory law.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- administrative unit
- auditor-general
- commissioner for public administration
- judge
- Minister (see s 162)
- ombudsman
- public servant
- statutory office-holder
- territory authority
- territory instrumentality
- territory law
- territory-owned corporation
- the Territory.

action report, for part 5 (Completing an investigation)—see section 47.

administering agency means the administrative unit allocated responsibility for this Act under the *Public Sector Management Act 1994*, section 14 (1) (b) (Ministerial responsibility and functions of administrative units).

completed, for an investigation of a public interest disclosure—see section 38, section 39 and section 40.

contact person, for a disclosure—see section 11.

CEO, of a government entity—see section 12.

detrimental action—see section 50.

- 1 ***discloser***—see section 15.
- 2 ***discloser identifying information***—see section 59.
- 3 ***discloser’s contact details***, for a discloser, means details of how a
4 receiver or investigator may contact the discloser about the public
5 interest disclosure.
- 6 ***divulge*** includes communicate.
- 7 ***engage*** in conduct means—
- 8 (a) do an act; or
- 9 (b) omit to do an act.
- 10 ***entity-appointed investigator***—see section 20 (2).
- 11 ***government entity***—see section 9.
- 12 ***government official***, for a government entity—see section 10.
- 13 ***informant identifying information***—see section 60.
- 14 ***information holder***—see section 55.
- 15 ***investigation notice***—see section 33.
- 16 ***investigation report***, for part 5 (Completing an investigation)—see
17 section 42.
- 18 ***investigator***, for a public interest disclosure—see section 20.
- 19 ***Legislative Assembly secretariat***—see the *Public Sector*
20 *Management Act 1994*, section 3.
- 21 ***protected information***—see section 56.
- 22 ***public interest disclosure***—see section 7.
- 23 ***public interest disclosure information***—see section 58.
- 24 ***public interest disclosures register***—see section 66.
- 25 ***public interest information***—see section 8.

- 1 *receiver*, for a public interest disclosure—see section 7.
2 *refusal notice*—see section 26.
3 *sensitive information*—see section 57.
4 *supervisor*, for a public interest disclosure—see section 13.
5 *supervisor-appointed investigator*—see section 20 (3).
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Endnotes

- 1 Presentation speech**
Presentation speech made in the Legislative Assembly on 2005.
- 2 Notification**
Notified under the Legislation Act on 2005.
- 3 Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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