

1996

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**PUBLIC INTEREST DISCLOSURE (AMENDMENT) BILL 1996**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of  
KATE CARNELL  
CHIEF MINISTER**

## **PUBLIC INTEREST DISCLOSURE (AMENDMENT) BILL 1996**

### **OUTLINE**

The *Public Interest Disclosure Act 1994* (the Act) sets in place a scheme to encourage disclosure of improper conduct or wrongdoing in the ACT public sector. The Act does this by providing certain protection and remedies for people who make disclosures. The Act also requires proper authorities (this is the term referring to all public sector bodies covered by the Act) to deal appropriately with and act on substantiated disclosures.

This Bill makes some technical amendments to the Act. The amendments fall into three categories.

#### *References to the Auditor-General*

The ACT Auditor-General already falls within existing provisions of the Act, as statutory office holders and associated staff are considered by the Act to be proper authorities to receive and act on disclosures. The amendments recognise the importance of the office of Auditor-General, along with the Ombudsman, in providing a source of independent investigation of disclosures where that is necessary as well as a source of scrutiny of agency actions.

The amendments clearly acknowledge the Auditor-General as a proper authority and, with some exceptions, extend to that office the provisions that define the role of the Ombudsman. One exception is that where a proper authority receives a disclosure that cannot be referred to another agency because of a risk of reprisal or prejudice, that matter must be referred to the Ombudsman. This is not changed. Reference in these circumstances is mandatory and the single source of reference is retained. The Ombudsman also has a power to make application for injunctions on behalf of victims of reprisal. This role is not extended to the Auditor-General.

#### *Discretions to decline to investigate disclosures*

The existing discretions to decline to act on disclosures in section 17 are refined and a discretion to decline to investigate a disclosure where there is a more appropriate remedy reasonably available is added. This is similar to provisions in the *Ombudsman Act 1989*

#### *Consequential amendments*

The terminology defining whose actions may be the subject of disclosures is adjusted as a consequence of the *Public Sector Management (Amendment) Act 1995*, which changed the tenure arrangements of former Senior Executive Service Officers to contract employees.

While the *Public Interest Disclosure Act 1994* has a wide ambit and applies to wrongdoing by officers, employees and other persons such as consultants or those otherwise acting on behalf of the Territory, the terminology within the key provisions of the Act focuses on the actions of officers. These amendments extend the use of an existing and widely defined term of “public official” to ensure the broadest coverage of

the Act and to more accurately reflect the current composition of the Public Service as well as other ACT government bodies covered by the Act

**Revenue or cost implications**

There are no revenue or cost implications

**NOTES ON CLAUSES**

**Clauses 1, 2 and 3** are formal requirements. The clauses refer to the short title of the Bill, commencement arrangements and definition of the Principal Act, which is the *Public Interest Disclosure Act 1994*. The Amendment Act will commence on the day on which it is notified in the *Gazette*

**Clause 4 - Interpretation.** This clause amends the definition of “public official” in section 3 of the Act. The term is defined to include officers (defined by reference to the *Public Sector Management Act 1994*), persons employed by the Territory, whether under an employment contract or as an independent contractor or consultant, and persons otherwise authorised to perform functions on behalf of the Territory. Paragraph (a) of the definition is amended so that it refers to officers and employees of government agencies

The clause also inserts a definition of “employee” so that the term includes a person who is an employee under the provisions of the *Public Sector Management Act 1994*

**Clause 5 - Proper authorities.** Section 9 of the Act is amended to substitute “public official” for any references to “officer”

**Clause 6 - Procedures.** Section 10 of the Act, under which proper authorities are required to set in place procedures to deal with disclosures and make information about the procedures available to staff and the public, is amended to replace references to officers with “public officials”

**Clause 7 - Report on disclosures.** This clause inserts a reference to the Auditor-General in section 11 of the Act. This will mean that agencies with annual reporting obligations must refer to any disclosure-related recommendations of the Auditor-General as well the Ombudsman in their annual reports.

**Clause 8 - Heading.** This clause includes a reference to the Auditor-General alongside the Ombudsman in the heading to Division 2 of Part II of the Act. The amended division will deal with some aspects of the powers of the Ombudsman and Auditor-General under the Act, particularly the power to intervene in certain disclosures.

**Clause 9 - Application of the Ombudsman Act 1989.** Section 12 permits the Ombudsman to use investigation powers under the *Ombudsman Act 1989* in the investigation of disclosures under the *Public Interest Disclosure Act 1994*. The clause makes a technical amendment to ensure effectiveness of the provision

It is noted here that it is not necessary to make similar provision for the powers of the Auditor-General. This is already provided for under paragraph 10(e) of the *Auditor-General Act 1996*. This includes in the Auditor-General's functions any function conferred by or under any other law of the Territory.

**Clause 10 Proper authorities.** This clause inserts a reference to the Auditor-General in section 13 of the Act. As a result, the section will state that the Ombudsman and the Auditor-General are proper authorities under the Act.

**Clause 11 Intervention by Ombudsman or Auditor-General.** Section 14 permits investigation of disclosures by the Ombudsman where the Ombudsman considers there is no proper authority that can adequately or properly act, or a proper authority has failed to act appropriately, on a disclosure. The amended clause means that in these circumstances the Ombudsman and the Auditor-General may act on disclosures.

**Clause 12 Frivolous etc disclosures.** Section 17 of the Act permits proper authorities to decline to act on disclosures in certain circumstances, such as where the matter is frivolous or vexatious; is misconceived or lacking in substance; is trivial; has already been dealt with adequately by another proper authority; or is an attempt to re-open a matter decided by a court or tribunal.

The clause amends the section in two ways so that a disclosure may be declined where

- it has already been dealt with adequately by any agency or body, not just by a body that falls within the definition of proper authority. Disclosures may cover matters that fall under other complaint or grievance processes dealt with by Commonwealth bodies, which would not fall within the existing provision; or
- there is a more appropriate method of dealing with the disclosure reasonably available.

Subsection 17(3) is amended to include reference to the Auditor-General. The sub-section currently requires a proper authority to seek the view of the Ombudsman before declining to act on any disclosures referred by the Ombudsman. The amendment extends this to apply to any disclosures referred to an agency by the Auditor-General.

**Clause 13 Referral without investigation.** This clause amends section 18 by replacing a reference to "officer" with "public official"

**Clause 14 Investigation by proper authority.** This clause amends section 19 by replacing references to "officer" with "public official"

**Clause 15 Referral with investigation.** This clause amends section 20 by replacing a reference to "officer" with "public official".

**Clause 16 Action by proper authority.** This amends section 22 to include reference to the Auditor-General. As a result of the amendment, proper authorities must have regard to any recommendations of the Ombudsman and the Auditor-General in taking necessary and reasonable action on substantiated disclosures.

**Clause 17 Relocation powers.** This clause amends section 27 by replacing references to “officer” with “public official”

**Clause 18 Substitution.** This substitutes a new section 28 Existing section 28 deals with relocation of officers in the event of reprisal because they have made a disclosure. The effect of the amendment is to replace the term “officer” with “ public official”.

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