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

PUBLIC INTEREST DISCLOSURE BILL 2012

EXPLANATORY STATEMENT

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OUTLINE

In the past few decades, a range of integrity measures have been put in place and evolved to uphold the public interest and ensure governments and their administrative staff are held to account for their decisions and actions. Public interest disclosure (PID) laws are one in a suite of public sector governance measures that assist people to raise concerns about significant wrongdoing in the public sector without fear of reprisal. In the ACT this has previously been achieved through the *Public Interest Disclosure Act 1994* (PID Act).

This Bill modernises the 1994 Act and is predominantly concerned with:

- a) how to facilitate the early reporting of suspected corruption, misconduct or maladministration;
- b) how to manage information and witnesses in this context; and
- c) how to reduce human and other costs.

Governments and their supporting administrative structures hold a special place in our society, being entrusted to manage considerable public resources and make decisions on the community's behalf. The public sector is an area that requires a specific kind of scrutiny to ensure these public resources are not wasted or used for individual gain.

In managing these resources, things can go seriously wrong. Sometimes this occurs due to an honest mistake, but occasionally it is more deliberate.

Australia is a signatory to the United Nations Convention Against Corruption which requires signatories to put in place appropriate measures to provide protection against any unjustified treatment of any person who reports in good faith and on reasonable grounds to an appropriate authority any facts concerning an offence contrary to the public interest.

It is sensible to encourage reports of serious maladministration if they are occurring, yet people often feel inhibited from making disclosures for fear of recrimination or jeopardising their career. A framework to deal with people and information when someone blows the whistle on wrongdoing is necessary so that the roles, obligations, procedures and expectations are clear. Whistleblowing and its management has become a normal part of good governance and the Bill intends to establish a more contemporary framework.

The Bill draws on three main sources. Firstly, it rests heavily on the Whistling While They Work (WWTW) collaborative research project led by Griffith University's Professor A.J. Brown, which looked at strategies that might prevent, reduce and address reprisals and other whistleblowing related conflicts. Secondly, it takes into account the findings of the Commonwealth's 2009 parliamentary report into a comprehensive whistleblower protection scheme for the Commonwealth public sector. And thirdly, it considers Queensland's recently enacted whistleblowing laws which have been celebrated as providing the current benchmark in disclosure laws in Australia.

Despite the wealth of information now available on this topic in Australia, this is not an easy area of public policy. People have the right to privacy and reputation but also

the right to impart information and comment on the use of public resources. Public interest disclosure laws work at the junction between private and public interests, between rights and duties, between loyalty, conscience and truth. A good public interest disclosure law works to balance competing concepts which on the one hand serve to protect the individual like freedom of speech and freedom of expression and on the other hand serve to protect community values like respect and integrity. The Bill hopes to achieve that aim.

Ministers and their public servants act as brokers of the public interest and part of their role calls on them to distinguish between and adjudicate on the merits of competing values. A sound framework is therefore needed to deal with situations where it is alleged they have got the balance seriously wrong.

While it is important to permit and encourage people to speak out against manifest injustice, it is also important to ensure that where the protection of the public interest is the goal of speaking out, the speaker should be given protection as the circumstances justify. In one sense, when a discloser is a medium through which integrity is enhanced, then PID laws simply act to codify a natural extension of the protection of the public interest to cover the individual when acting as its conduit.

The Bill is broken into a number of parts, each dealing with the main areas of public interest disclosure schemes – scope, procedures and protection. The subject matter of PIDs are dealt with in Parts 2 and 3 (clauses 7 to 17) while the procedural and administrative aspects are set out in Part 4 (clauses 18 to 26) and Part 6 (clauses 28 to 34). Legal protections for disclosers are provided for in Part 7 (clauses 35 to 42) while matters related to external disclosures are dealt with in Part 5.

DETAIL

Clause 1 Name of Act

This is a technical clause stating the name of the Bill if enacted, which is the *Public Interest Disclosure Act 2012*.

Clause 2 Commencement

This is a technical clause setting the date of commencement as 1 February 2013.

Clause 3 Dictionary

This is a technical clause clarifying that the Dictionary that is found at the rear of the Bill should be read as part of and in conjunction with the remainder.

Clause 4 Notes

This is a technical clause clarifying that Notes should be read in conjunction with the Bill to assist the reader with comprehension, however in accordance with the *Legislation Act 2001*, they have no legal status.

Clause 5 Offences against Act – application of Criminal Code

This clause is technical and clarifies the relationship between the Bill and the Criminal Code.

Clause 6 Object of Act

This is an explanatory clause providing the reason for the legislation and setting the spirit within which the Bill should be read. The Bill gives expression to the Government's commitment to supporting public interest whistleblowing by facilitating the reporting of wrongdoing: it aims to ensure that a person making a report is treated respectfully and protected against detriment and reprisal; it aims to ensure that reports are properly assessed and where necessary, investigated and actioned; and it also aims to give consideration to the interests of the parties in relation to a disclosure.

Clause 7 Meaning of *public interest disclosure*

Clauses 7 to 12 of the Bill define key concepts which set the jurisdictional limits central to its effective operation. The legislation places clear boundaries on its use to ensure that it is reserved for serious matters where internal resolution may be hampered by interests opposed to proper investigation of the matter.

A robust PID scheme is intended to encourage the reporting of serious wrongdoing. But it should not be seen as creating an open invitation to leak information. There are legitimate reasons why as a rule confidentiality should be maintained, and only in rare circumstances that genuinely threaten the public interest is it permissible to breach that confidence. These six clauses aim to clarify those circumstances.

Clause 7 defines the term *public interest disclosure*, the main concept of the Bill. The definition relies on other definitions that appear in the Bill and they should be read together. However, in broad terms, a public interest disclosure is a report about conduct that is potentially harmful to the public interest. Note that the definition includes the initial report as well as subsequent information offered by the discloser. There are other terms critical to the operation of this definition such as what type of conduct, who can disclose and to whom may a disclosure be made which are dealt with later. The significant point for this definition is that even though a disclosure might be found later not to warrant investigation, the discloser may still attract legal protection and accordingly the report would still be considered a public interest disclosure regardless of the investigative status of the information.

The clause specifies the base threshold that must be met before a statement can be considered a disclosure. A person cannot claim public interest disclosure status if they make a statement that they know to be false or misleading.

Clause 7 also contains both subjective and objective tests for a PID. To qualify as having made a PID, a discloser must believe in the truth of his or her statement and that it reveals something that could be harmful to the public interest (the subjective test). Otherwise, where the subjective status of what is said is uncertain, the information revealed must point toward something that may be harmful to the public interest (the objective test). If either test is met, the statement will be considered a PID, regardless of the subsequent need for or outcome of an investigation.

Under the Bill, the motivation of the discloser is irrelevant to whether a matter requires investigation as a PID. The Bill has as its focus the nature of the information being disclosed rather than the reasons of the discloser. While the interests of the person bringing a matter forward are legitimate, upholding the public interest and strengthening public sector integrity are the paramount concern and focus.

The clause also makes explicit that statements questioning government policy will not be considered a PID.

Clause 8 *Meaning of disclosable conduct*

This clause defines further key terms central to the operation of the Bill: *conduct*, *disclosable conduct*, *maladministration*, and *official misconduct*. Disclosable conduct is another central aspect of the Bill because it establishes the things that are considered so serious that they warrant being brought to light and investigated as a PID. Clause 8 defines disclosable conduct and establishes criteria for what kinds of wrongdoing qualify as a public interest disclosure. This is the second gateway to qualifying for legislative protection. The kinds of things that would meet the criteria in the Bill are those suggested by the WWTW project including illegal activity, corruption or official misconduct, intentional misuse or waste of public funds, maladministration, and dangers to the health and safety of the public or environment.

Disclosable conduct is further defined as any conduct that is dishonest, not impartial, amounts to a breach of trust, or a misuse of information for individual gain. The conduct must also either a) be a crime, b) constitute misconduct that would form

grounds for ending the appointment or contract, or c) potentially amount to maladministration.

The existence of maladministration in an organisation is a genuine measure of integrity and if alleged, should be investigated. The Bill defines it as an administrative action that is unlawful, unreasonable, unjust, oppressive, improperly discriminatory, negligent, or based on improper motives.

Note that not only would a public servant's actions be scrutinised under this clause; a person seeking to influence an official to act in an improper way will also be caught under the definition of disclosable conduct in the Bill.

Clause 9 Meaning of *public sector entity*

Consistent with the 1994 Act, a distinction being drawn in the new legislation is that between the public and private sectors – this Bill is about conduct in the public sector. In other words, the wrongdoing that may be the subject of a legitimate disclosure must relate to the range of organisations performing a public function such as the parliament, government departments, government authorities, or government corporations. This includes anything done by a contractor to these bodies. The Bill is concerned with the ACT public sector and not the Commonwealth public sector or any other jurisdiction.

Building on the definition of disclosable conduct above, clause 9 defines the term *public sector entity*. In PID terms, a public sector entity can be one of a number of public bodies. A public sector entity can be either: an ACT administrative unit such as the Chief Minister's and Cabinet Directorate or any other unit established under the *Public Sector Management Act 1994*; a territory authority or instrumentality as defined under the *Legislation Act 2001*, a Territory owned corporation or one of its subsidiaries established under the *Territory-owned Corporations Act 1990*; or a statutory office holder such as the Commissioner for Public Administration, the Electoral Commissioner, the Auditor-General, or the Ombudsman. A public sector entity can also be either a Member of the Legislative Assembly, the Office of the Legislative Assembly, or a person employed under the *Legislative Assembly (Member's Staff) Act 1989*. This establishes a broad but appropriate level of coverage.

The Bill also provides that a public sector entity can be excluded from the definition of public sector entity by regulation.

Clause 10 Meaning of *public official*

This clause defines the term *public official*. Importantly, this definition extends to anyone representing Government interests or expending public money, for example, employees, contractors and volunteers of public sector entities. As foreshadowed in the definition given to *public sector entity* above, a *public official* is anyone employed by a public sector entity, or anyone contracted to perform work on behalf of a public sector entity (including the contractor's contractors, employees, or volunteers).

The Bill also provides that a person can be included in the definition of public official by regulation.

Clause 11 Meaning of *disclosure officer*

This clause defines the term *disclosure officer* and along with clause 18 comprises the framework establishing a hierarchy of responsibility in relation to PIDs. The concept of disclosure officer is important because it sets out the options available to the potential discloser and who may legitimately receive a disclosure.

Ideally, a PID should be made to the entity responsible for the conduct in question to accord them with the opportunity to respond to issues in the PID as per natural justice principles. In practice a disclosure may arrive on a variety of doorsteps, however the setting out of responsibilities in the Bill ensures appropriate action is taken and maintains the effective administration of the scheme.

For matters that relate to an ACTPS entity, the Commissioner for Public Administration is a disclosure officer under the Bill. It is also intended that the Commissioner provide a central oversight role and acts as a point of coordination for matters raised under the scheme. This aspect is dealt with further under clauses 28 to 34 below.

The Auditor-General and the Ombudsman are also disclosure officers under the new legislation, including for disclosures that relate to the ACTPS as well as the Legislative Assembly.

It is recognised that in practice, the Ombudsman and Auditor-General would be likely to refer the disclosure to the responsible entity before undertaking their own investigation (unless the matter involved the head of an entity). However, it is appropriate that the Ombudsman and Auditor-General have far reaching powers under the Bill because it is well established that they are the primary integrity agencies.

For an ACTPS entity, in addition to the Commissioner, a disclosure officer can either be the head of the entity (for example, the Director-General, the Chief Executive Officer, or responsible Commissioner) or the Head of Service established under the *Public Sector Management Act 1994*.

For disclosures that relate to the Legislative Assembly (members or officers), the Clerk is a disclosure officer in addition to the Auditor-General and Ombudsman.

Under the Bill, ACTPS entities and the Legislative Assembly must nominate at least one designated disclosure officer and it is envisaged that they will be the primary contact point for those making public interest disclosures.

Clause 12 Meaning of *relates to an entity*

This clause specifies how a PID must relate to an entity for the disclosable conduct to be attributable to the entity. It confirms that not only conduct by the entity and its officials is captured, but also that of any other person that affects the functions of an entity of public official (for example, a contractor).

Clause 13 *head of a public sector entity*

This clause defines the term *head of a public sector entity*. This definition further clarifies clause 11.

Clause 14 Who may make a public interest disclosure?

Clauses 14 to 26 outline the process for making a public interest disclosure and makes clear the roles of the parties likely to be involved in a PID.

Clause 14 clarifies that anyone is able to make a PID. In some jurisdictions, only internal witnesses (i.e. public sector employees) are entitled to make PIDs. However in keeping with the 1994 legislation, and considering the proximity of the Canberra community to the services being provided, it was decided to retain the ability for a member of the public to lodge a PID under the new legislation.

Clause 15 To whom may a public interest disclosure be made?

This clause clarifies who a discloser should approach when making a PID. The aim of the clause is to ensure a ‘no wrong-door’ approach is adopted to make the process as simple as possible for the discloser.

Ideally, a disclosure should be made to a designated disclosure officer who will have been trained in receiving and actioning disclosures. In practice this is sometimes not possible so other options are also provided in the Bill. Of these options, the most likely scenario is for an individual to talk to their immediate supervisor. Accordingly, the Bill designates a manager as authorised to receive a public interest disclosure.

The Bill also states that a Minister or member of a governing board can receive a PID as well as a public official where the matter being disclosed falls under their responsibility. However, a duty is built into the new legislation for individuals who are not disclosure officers to refer a PID to a designated disclosure officer (who under proposed section 17 will also inform the head of the entity, the Commissioner and the Ombudsman). This facilitates the effective actioning of a PID by requiring those receiving the information to determine at the earliest stage the appropriate response required.

Clause 16 How may a public interest disclosure be made?

This clause explains the appropriate form in which a public interest disclosure should be made. Essentially, a disclosure can be made in any way, even inadvertently.

In line with good record keeping practice (and the *Territory Records Act 2002*), where concerns are raised in conversation, a duty exists for the receiver to make a written record of the disclosure made.

A discloser does not need to identify themselves when making a disclosure, however anonymous disclosers must recognise the difficulty in providing protection or further investigating their claims where information is limited.

Clause 17 Disclosure officer must tell a public sector entity about disclosure

This clause directs a disclosure officer to notify specific parties on receiving a PID. This would include informing the head of the entity concerned, the Commissioner for Public Administration and where a disclosure relates to an administrative unit under *Public Sector Management Act 1994*, the Head of Service.

Clause 18 Investigation of public interest disclosure

This clause relates to who should respond to a disclosure and how this should be done. As a first step, the entity which is responsible for the subject matter of a disclosure should investigate the disclosure internally. In accordance with good management practice, the area responsible for the conduct in question should look into a matter first and be given the opportunity to remedy mistakes or amend wrongs before the investigation is escalated. However, the Bill does allow for exceptions where the PID is about senior officials and provides for the investigation to be conducted by an external or higher body, for example, the Head of Service, Auditor-General or the Ombudsman.

Clause 19 Referral to another public sector entity

This clause allows a head of a public sector entity to which a PID relates to refer the PID for investigation by another public sector entity if appropriate. There is a reasonableness requirement attached to a decision to make this referral to ensure that it cannot be made purely on convenience grounds.

The clause further provides that a head of a public sector entity that has such a referral made to him or her must investigate the PID.

Clause 20 Investigating entity may decide not to investigate

There may be cases where the investigation of a disclosure is not warranted and this clause gives an entity with responsibility for investigating a disclosure the option not to investigate on specified grounds.

An entity must provide very good reasons supported by relevant evidence for choosing not to investigate further. This could include where the disclosure is withdrawn, a lack of information or willingness for the discloser to participate in an investigation makes it impracticable, the information on which the disclosure is based is wrong, too old, or has already been investigated, or where another avenue of investigation exists which would offer more suitable outcomes.

Clause 21 Referral to chief police officer

This clause makes clear that where a disclosure brings criminal matters to light, the responsible entity must refer the matter to the police for investigation.

Clause 22 Investigating entity must keep referring entity informed

Clauses 22 to 26 are about the sharing of information.

Clause 22 establishes the information requirements where a PID is referred to another public sector entity under the mechanism in proposed section 19. The investigating entity is required to inform the entity of progress and outcomes in relation to the investigation, whether the investigation proceeds or not.

Clause 23 Discloser must be kept informed

This clause places the onus on an investigating entity to communicate regularly with the person who disclosed the information which led to the investigation. This would include a decision to refer the PID to another entity to investigate, a decision not to investigate, or the progress or outcome of an investigation.

Clause 24 Public sector entity must take action

Clause 24 in some ways does the main work associated with the intent of Bill. Where a head of a public sector entity reasonably believes disclosable conduct has occurred or is likely to occur, clause 24 obliges the entity to do something to address the matters comprising the disclosable conduct. It also obliges the entity to tell the discloser about what they intend to do.

Clause 25 Commissioner must be kept informed

The Commissioner for Public Administration has overall management responsibility under the new legislation and for this reason must be kept informed of the status of a disclosure, including any significant progress made, when it is referred, any action taken in response, or where a decision is made not to investigate. This clause establishes these obligations.

Clause 26 Limitation on obligations to keep people informed

The Bill clearly intends better information requirements surrounding a PID, on the basis that if it is in the public interest to investigate matters contained in a PID, then it is likely to be in the public interest to make any outcomes generally known. Increased information also assists in assuring the community that the PID process is appropriately utilised as part of the Government's integrity structure.

However, clause 26 makes clear that not all the information relating to a PID is appropriate to be made public in all circumstances. In particular, the obligation to pass on information is removed where to do so might compromise or prejudice an investigation. Other situations where the Bill waives the obligation to keep parties informed about the progress or outcomes of a PID investigation include where it might affect the health or safety of an individual, or where it could be deemed unlawful (examples of legislative obligations to keep in mind in this context would be the *Privacy Act 1988* (Cth), the *Health Records (Privacy and Access) Act 1997* and sections 153 and 439 of the *Crimes Act 1900*).

Clause 27 When disclosure may be made to Legislative Assembly or journalist

This clause permits a disclosure to be made under certain conditions to a member of the Legislative Assembly for the ACT or a journalist.

It is not unusual for matters to come to the attention of the media, nor is it revolutionary to suggest that a person could raise their concerns with their local member. However, the conditions under which a report to the Assembly or the media will be protected under the PID regime are necessarily strict.

In most cases, before a disclosure to the media is protected, a person must first have made a genuine attempt to have their case heard internally. Then if the investigating entity refuses or fails to investigate, or has not complied with the information requirements for the discloser, or finds disclosable conduct has occurred but declines to take action, the discloser is able to go to the media or the Assembly without losing legislative protection.

There is also one circumstance allowed under the Bill for a potential discloser to go direct to the media or a member of the Legislative Assembly without lodging their PID with one of the people listed under proposed section 15. This is in the rare situation where it would be unreasonable to require the person to try to go to a public sector entity to have the matter resolved, and there is a risk of detrimental action or harm to a person if the PID was to be lodged.

The intent of this section is to establish a mechanism through which a report about grand corruption can be made and protections afforded without the discloser being left in fear of retaliation. A disclosure to the media or member should be seen as an avenue of last resort. The intent of the provision is to cover instances of significant corruption or maladministration so seriously embedded that there is no chance of the discloser receiving a fair hearing by either the entity responsible or the oversight agencies.

Clause 28 Commissioner's functions

Clauses 28 to 34 are administrative provisions relating to oversight functions. Clause 28 outlines the role of the Commissioner for Public Administration. The Commissioner is obliged to monitor the investigation of disclosures and the treatment of staff who are involved in a PID. The Commissioner is also able to pass information on to the ombudsman if appropriate.

Clause 29 Commissioner may review decisions

This clause gives the Commissioner for Public Administration an overall oversight function in relation to PIDs. This is to encourage consistency in the manner that PIDs are handled in the ACT Public Service.

Clause 30 Report by commissioner

This clause gives the Commissioner an explicit power to report to the Minister about a disclosure. It is envisaged that a report can contain the Commissioner's assessment of the treatment of the disclosure but only if a person mentioned in the report has had the opportunity to respond to any criticisms or perceived failings.

Clause 31 Commissioner must tell discloser about decision

This clause is about transparency of decision making and information flows. It ensures that where the Commissioner for Public Administration reviews the investigation of a disclosure and changes the outcome, they must tell the discloser about the change and why it was made subject to the limitations in proposed section 26.

Clause 32 Commissioner's guidelines

It is envisaged that guidelines about the management of disclosure will need to be put in place to make clear to all involved, especially administrative staff, the roles and obligations of parties to a disclosure. This clause requires the Commissioner for Public Administration as oversight agency to set those guidelines.

The guidelines are designated as a notifiable instrument and will therefore be available on the ACT legislation register with the Act.

Clause 33 Public interest disclosure procedures

This clause creates an obligation on public sector entities to prepare and publish procedures that outline how they will deal with public interest disclosures made to or about them. In the interests of transparency and accountability, procedures that will be followed in receiving and actioning a PID are to be openly available to the public.

Clause 34 Role of the ombudsman

The Ombudsman is recognised as a primary integrity agency for the public sector. This clause outlines the ombudsman's role in the PID framework being established by the Bill. Note that the powers given to the ombudsman are broad and allows him or her to stand in the shoes of the Commissioner in some circumstances.

Clause 35 Immunity from liability

Clauses 35 to 42 outline the safeguards in place for those bringing a legitimate public interest matter to light under the Bill. Clause 35 makes clear that the usual secrecy, confidentiality or other ethical, professional and legal requirements do not apply once an assessment is made that a person has brought forward a genuine PID. This includes a waiver from all civil and criminal liability that the person would otherwise incur because of making the PID.

Clause 36 Protection from defamation action

Under the *Human Rights Act 2004*, a person has the right to privacy and reputation but also the right to impart information. In the case of public interest disclosures, these competing rights must be balanced in a way that best preserves the public interest.

Some disclosures are by their very nature likely to bring the reputation of others into question. This clause clarifies that where a disclosure is damaging to a person's reputation and that person sues the discloser for defamation, so long as the statements made by the discloser qualify as a PID, then the discloser is permitted to use the defence of absolute privilege against the defamation action.

Providing an absolute privilege is considered appropriate for PIDs because if they are a legitimate truth finding exercise that seeks to right wrongs then they should be treated the same as other areas of public life pursuing similar ends such as official inquiries and court proceedings.

Clause 37 Loss of protection

This clause limits protection to those who have made a genuine PID. That is, if a person has knowingly provided false information or is vexatious, a court can find that the discloser is not permitted to rely on the protections available under the Bill.

Clause 38 Liability for own conduct

To avoid cases where a disclosure is made with the sole purpose of seeking the immunity provided under proposed section 35, this clause clarifies that a person does not discharge their responsibility for their actions simply by making a PID. In other words, they do not become protected from the ramifications of their own conduct simply by couching it in PID terms.

Clause 39 What is *detrimental action*?

This clause defines the kinds of responses to a PID that are unacceptable. Retaliation in the form of unfavourable treatment with regards to a person's career or reputation is not permitted, nor is harassment or intimidation. Similarly, making real threats and causing damage or injury to a person or their property will be considered detrimental action under the Bill.

Clause 40 Offence – taking detrimental action

This clause creates a criminal offence for taking detrimental action as defined in proposed section 39.

Clause 41 Damages for detrimental action

This clause allows a person to seek compensation from a person who retaliates against the person for making a PID. It has been left for the court to decide the appropriate remedies available to a discloser who suffers a reprisal.

Clause 42 Injunction to prevent detrimental action

This clause allows the Supreme Court to issue an order to stop or prevent detrimental action occurring.

To give greater weight to the likelihood that a case will be prosecuted, not only can a person who suffers for making a disclosure seek an injunction under the Bill, but the Commissioner for Public Administration can also apply to the court on behalf of someone suffering reprisal action.

Clause 43 Protection of officials from liability

This clause provides that officials operating under the auspices of the legislation will be protected from civil liability as long as they act honestly, without recklessness and in good faith. These provisions are similar to laws for other oversight bodies, such as the Auditor-General.

Clause 44 Offences – use or divulge protected information

This clause makes passing information obtained during a disclosure further than is warranted or necessary a crime. It mirrors clauses that appear in other investigation enabling laws such as the *Auditor-General Act 1996*.

Clause 45 Information to be included in annual report

This clause obliges administrative units to publish details in their annual reports about how many disclosures are made each year and other details such as investigations undertaken, average investigation times and any other matters as prescribed.

Clause 46 Approved forms

This clause permits the Commissioner to make forms for the purposes of administering the Act. Where forms are created, they must be publicised and notified on the Legislation Register.

Clause 47 Regulation making power

This clause provides that the executive may make subordinate legislation to support the operation of the Act.

Clause 100 Act applies to disclosures made after commencement

Clauses 100-103 are transitional provisions and relate to how old and new disclosures should be treated, along with how the Ombudsman's powers operate within the PID sphere.

Clause 100 is a technical clause clarifying that the Act will only apply to disclosures made after commencement, not just conduct that occurred after commencement.

Clause 101 Public Interest Disclosure Act 1994 applies to disclosures made before commencement

This clause clarifies that disclosures made up until the day before the Act commences must be managed under the *Public Interest Disclosure Act 1994*.

Clause 102 Transitional regulations

This clause provides an opportunity for the executive to make transitional regulations if the need arises.

Clause 103 Expiry – pt 20

This is a technical clause setting an expiry date for clauses 100-103.

Clause 104 Repeal of the Public Interest Disclosure Act 1994

This is a technical clause to repeal the *Public Interest Disclosure Act 1994*.

Clause 105 Ombudsman Act 1989, section 4A (c)

This is a technical amendment to ensure the Ombudsman Act refers to the new legislation once enacted.

Clause 106 Ombudsman Act 1989, new section 5(2A)

This clause clarifies the operation of the Ombudsman Act in relation to public interest disclosures. Clause 106 creates a discretionary power for the Ombudsman to investigate disclosures as of right.

Dictionary

The dictionary defines terms used in the Bill.