

CLAUSE NOTES

PUBLIC INTEREST DISCLOSURES AMENDMENT BILL 2009

- Clause 1:** This Act may be cited as the *Public Interest Disclosures Amendment Act 2009*.
- Clause 2:** This Act will commence when proclaimed. Proclamation is will be linked to the timing of the proclamation of the *Integrity Commission Act 2009*.
- Clause 3:** The Principal Act is defined as the *Public Interest Disclosures Act 2002*.
- Clause 4:** The long title of the Principal Act is broadened to include an additional object, the object being to ensure that all parties involved in a disclosure are provided natural justice.
- Clause 5:** This clause makes changes to the interpretations in the Principal Act to accord with the changes made later in the Bill, of note is the extension of the definition ‘contractor’ to include both the employee of a contractor and a subcontractor so that they can also receive protection for disclosing improper conduct and the removal of the definitions of ‘public officer’ and ‘public body’ to allow for more specific definition in an amended Section 4.

Clause 6: This clause replaces section 4 with a new section containing extended definitions of public bodies and officers. Included in the new definitions are council-owned companies, ministerial officers, and parliamentary staff.

This clause also continues the current list of exemptions, with the addition of the Integrity Commission and the Governor of Tasmania, and the removal of ministerial officers and parliamentary staff, the Auditor-General, the Ombudsman, and the State Service Commissioner.

Clause 7: This clause amends section 6 to remove the 'on reasonable grounds' test when making a disclosure about improper action or detrimental action. This allows the person making the disclosure to be protected immediately the disclosure is made.

Clause 8: This clause amends section 7 to take into account earlier changes made to the definition of public bodies. The amendment establishes the appropriate person to whom disclosures about certain specified public officers are to be made, and places the Integrity Commission into the process for receiving disclosures.

Clause 9: A new section 7A is inserted to enable a person to whom a disclosure may be made to treat any other person not a public officer as a contractor for the purpose of making a

disclosure. This enables the person making the disclosure to gain the protections under the Act.

Clause 10: This clause amends section 8 to include the requirement that for a person to receive an anonymous disclosure, they must be satisfied that the disclosure is being made by a public officer or contractor.

Clause 11: This clause repeals section 13 and replaces it with a new section that excludes a person who has been convicted of an offence under section 87 from protection under the Act.

Clause 12: This clause amends section 15 so that the provision of further information regarding a disclosure to the chairman of the Public Accounts Committee, and the Integrity Commission, is also protected. It also provides for further information provided during a process in accordance with this Act eg an investigation, to also be protected.

Clause 13: This clause amends section 17(2) to provide that confidentiality provisions do not apply to further disclosures of information made in accordance with the Act.

Clause 14: This clause amends section 23(1)(a) to include the chairman of the Public Accounts Committee and the Integrity Commission in the list of bodies and positions to whom

confidential information may be revealed in the course of or as result of a disclosure or the investigation of a disclosed matter.

Clause 15: This clause repeals section 24, which becomes obsolete following the amendments in clause 7, 12 and 13.

Clause 16: This clause tidies up unclear language in Section 27.

Clause 17: This clause inserts a new Part 4A to provide for the insertion of the Integrity Commission into the public interest disclosure process. The new Part provides for:

- action by the Integrity Commission on the receipt of a disclosure;
- the referral of a disclosure to the Integrity Commission;
- how the Commission deals with a referral; and
- notification requirements.

Clause 18: This clause inserts a subsection into section 33 so that a public body is not required to make a determination of a disclosure as a public interest disclosure where the disclosure is referred to the Integrity Commission and the Commission decides to deal with it under the *Integrity Commission Act 2009*.

Clause 19: Section 35 is amended by providing that the Ombudsman must be notified of every public body determination that a disclosure is **not** a public interest disclosure, and the Ombudsman must review that determination.

Clause 20: Section 36 is repealed as it is obsolete in the light of the amendments to section 35.

Clause 21: This clause amends section 38 to broaden the functions of the Ombudsman. These additional functions are:

- to prepare and publish both standards and guidelines for procedures to be followed by public bodies;
- to include the application of natural justice to all parties in the standards and guidelines;
- the approval and 3 yearly review of procedures developed by public bodies in accordance with the standards and guidelines;
- to receive notification of all PIDs made to public bodies;
- to prepare and publish standards and guidelines for assessing improper conduct;
- monitoring the progress of investigations by public bodies;
- to provide advice on the Act;
- to provide education and training to assist with the implementation of the Act.

Clause 22: A new section 39A is inserted which provides a timeframe for the Ombudsman to complete investigations of disclosures made to him or her. The Ombudsman must report to Parliament any investigation which extends beyond 12 months.

Clause 23: This clause amends section 40(1) to insert additional matters that do not have to be investigated by the Ombudsman. These are disclosures that relate solely to personal matters, those based on false or misleading information, or where the matter is the subject of a disclosure that has already been determined.

Clause 24: Section 46(2)(a) is updated to replace the term 'chief executive officer' with 'principal officer' to reference the definition inserted in section 3.

Clause 25: This clause amends section 56(2) to take into account the inclusion of ministerial officers and parliamentary staff in the definition of public officer. This clause identifies to whom the Ombudsman must make the report on the investigation into disclosures concerning these officers.

Clause 26: This provision repeals section 60 and substitutes it with a new section that requires a public body to establish procedures that comply with the Ombudsman's guidelines and

standards and, to enhance the protection afforded by the Act, the new section also requires that these procedures include procedures for the protection of the welfare of the person making a disclosure. To ensure that the Ombudsman monitors these procedures, the new section further requires the public body to submit its procedures to the Ombudsman for approval, and then resubmit at least once in each 3-year period.

Clause 27: Section 62 is amended to insert the requirement that the Ombudsman review the public body procedures at least once in each 3-year period. This clause also inserts the word standards to continue earlier changes that enable the Ombudsman to develop both standards as well as guidelines.

Clause 28: This clause inserts 2 new sections. Section 62A establishes the role of 'principal officer' of a public body and sets out the officer's responsibilities. This position is critical to facilitating disclosures as it identifies the key person to receive disclosures and ensure that they are appropriately dealt with. This position is also give the primary responsibility to ensure that witnesses and those making the disclosure are protected.

The new section 62B provides the principal officer with the power to delegate any or all of their functions or powers. This will enable the

principal officer to have a number of PID officers if required, for example in a large organisation or in an organisation with separate work site locations. It also enables an officer to specialise in a particular function, for example, in the welfare of witnesses.

Clause 29: This clause amends section 64 to include further matters that do not have to be investigated by a public body. This makes the same provision for public bodies as the amendment in Clause 22 regarding additional matters that do not have to be investigated by the Ombudsman.

Clause 30: This clause amends section 65 in order to require a public body to notify the Ombudsman of any determination made by a public body that a disclosure will not be investigated. The Ombudsman is then required to review that determination. These amendments ensure that a public body cannot avoid investigating disclosures where they should be investigated.

Clause 31: This clause repeals section 66 which is obsolete in light of the amendments in clause 29.

Clause 32: This clause amends section 68 to enable a public body to refer a disclosure to the Ombudsman for investigation where the public body does not have the capacity to complete

the investigation. This may be necessary where, for example, a witness refuses to cooperate with the public body.

Clause 33: Section 71 regarding the Ombudsman's powers in relation to investigations referred to him or her is amended to include reference to the new section 77A (see clause 34 below)

Clause 34: This clause inserts a new section 77A which establishes a stepped approach from the public body to the Ombudsman, and ultimately to Parliament, for investigations of public disclosures. This approach is to ensure that investigations are carried out and completed in a timely manner, and that there are consequences if this does not occur. The approach requires a public body to complete an investigation of a PID within 6 months. The body may apply to the Ombudsman for an extension of up to a further 6 months. If the investigation is still not completed the public body must refer it and all relevant information to the Ombudsman within 14 days. If the Ombudsman cannot complete any referred investigation within 6 months, the Ombudsman must provide the Parliamentary Joint Standing Committee on Integrity with a report.

Clause 35: Section 84 is amended to include standards as well as guidelines in the requirements regarding information to be included in the Ombudsman's annual report.

Clause 36: Section 87, which establishes the offence to make a false disclosure, is amended to include the chairman of the Public Accounts Committee and the Joint Committee in the list of persons or bodies to whom a disclosure may be made.

Clause 37: This clause provides for the Bill to be repealed 90 days after it commenced, in accordance with current practice for amendment Bills.