

2004-2005-2006-2007

The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

## **Public Interest Disclosures Bill 2007**

**No.     , 2007**

*(Senator Murray)*

**A Bill for an Act to encourage and facilitate the disclosure of information in the public interest, by protecting public officials and others who make disclosures, and for related purposes**



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1 **A Bill for an Act to encourage and facilitate the**  
2 **disclosure of information in the public interest, by**  
3 **protecting public officials and others who make**  
4 **disclosures, and for related purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Preliminary**

7 **1 Short title**

8 This Act may be cited as the *Public Interest Disclosures Act 2007*.

9 **2 Commencement**

10 This Act commences on the day on which it receives the Royal  
11 Assent.

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1     **3 Purpose**

2                     The purposes of this Act are to increase the transparency and  
3                     accountability of institutions of government by:

- 4                     (a) facilitating the disclosure of information in the public  
5                     interest; and  
6                     (b) ensuring that disclosures of information in the public interest  
7                     are properly dealt with; and  
8                     (c) providing protection for public officials who disclose  
9                     information in the public interest, including relief from  
10                    liability at law.

11     **4 Act binds the Crown**

- 12                   (1) This Act binds the Crown in all its capacities.  
13                   (2) Nothing in this Act renders the Crown liable to be prosecuted for  
14                   an offence.

15     **5 Interpretation**

- 16                   (1) In this Act, unless the contrary intention appears:

17                    **agency head** means:

- 18                    (a) an agency head within the meaning of section 7 of the *Public*  
19                    *Service Act 1999*; or  
20                    (b) the Chief Executive or person responsible for any  
21                    Commonwealth agency or body subject to the *Financial*  
22                    *Management and Accountability Act 1997*; or  
23                    (c) the Chief Executive or person responsible for any  
24                    Commonwealth agency or body subject to the  
25                    *Commonwealth Authorities and Companies Act 1997*.

26                    **detrimental action** means any act or omission which causes  
27                    detriment to any person, in which it was a ground of any  
28                    significance that a public official had made or may make a public  
29                    interest disclosure, and includes but is not limited to:

- 30                    (a) personal injury or prejudice to safety;  
31                    (b) property damage or loss;  
32                    (c) intimidation or harassment;

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- 1 (d) adverse discrimination, disadvantage or adverse treatment  
2 about career, profession, employment, trade or business;  
3 (e) dismissal from employment;  
4 (f) reduction of pay or duties;  
5 (g) termination of contracts or services;  
6 (h) bringing a civil action alleging breach of a duty of secrecy or  
7 confidentiality or of any other restriction on disclosure;  
8 (i) disciplinary action under a written law;  
9 (j) threats of detriment;  
10 (k) financial loss.

11 ***improper conduct*** means a breach or attempted breach of the  
12 standards of conduct that would be expected of a public official by  
13 reasonable persons with knowledge of the duties, powers and  
14 authority of the position, and includes but is not limited to:

- 15 (a) conduct that involves, or that is engaged in for the purpose  
16 of, a public official abusing his or her office as a public  
17 official;  
18 (b) conduct of a person (whether or not a public official) that  
19 adversely affects, or could adversely affect, either directly or  
20 indirectly, the honest performance of a public official's or a  
21 public body's functions; or  
22 (c) conduct of a public official that amounts to the performance  
23 of any of his or her functions as a public official dishonestly  
24 or with inappropriate partiality;  
25 (d) conduct of a public official, a former public official or a  
26 public body that amounts to a breach of public trust;  
27 (e) conduct of a public official, a former public official or a  
28 public body that amounts to the misuse of information or  
29 material acquired in the course of the performance of his, her  
30 or its functions as such (whether for the benefit of that person  
31 or body or otherwise);  
32 (f) conduct that perverts, or that is engaged in for the purpose of  
33 perverting, the course of justice;  
34 (g) conduct that, having regard to the duties and powers of a  
35 public official, is engaged in for the purpose of corruption of  
36 any other kind;

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1 (h) a conspiracy or attempt to engage in conduct referred to in  
2 paragraphs (a) to (g).

3 **journalist** means a person engaged in the occupation of writing or  
4 editing material intended for publication in the print or electronic  
5 news media.

6 **matter of national environmental significance** has the meaning  
7 given in Part 3 of the *Environment Protection and Biodiversity*  
8 *Conservation Act 1999*.

9 **member of the Australian Federal Police** has the meaning given  
10 in the *Australian Federal Police Act 1979*.

11 **member of the Australian Defence Force** means an officer,  
12 soldier, sailor or airman under the *Defence Act 1903*.

13 **private grievance** includes any complaint by a public official  
14 about:

15 (a) action taken by his or her employer in relation to his or her  
16 employment, other than alleged detrimental action under this  
17 Act, that otherwise raises no issues of public interest; and

18 (b) conduct taken against him or her personally by any  
19 individual or individuals, other than alleged detrimental  
20 action under this Act, that otherwise raises no issues of  
21 public interest.

22 **public interest information** means information that shows, tends to  
23 show, or that the person providing the information believes on  
24 reasonable grounds shows or tends to show, that in relation to the  
25 discharge of a Commonwealth public function, a person, authority  
26 or corporation has undertaken or proposes to undertake:

27 (a) improper conduct; or

28 (b) a serious breach of the Australian Public Service Code of  
29 Conduct established by section 13 of the *Public Service Act*  
30 *1999* (other than a breach giving rise only to a private  
31 grievance); or

32 (c) a serious breach of the Parliamentary Service Code of  
33 Conduct established by section 13 of the *Parliamentary*  
34 *Service Act 1999* (other than a breach giving rise only to a  
35 private grievance); or

- 1 (d) administrative action that is unjust, discriminatory, unfair or  
2 otherwise wrong under the *Ombudsman Act 1976*; or  
3 (e) action contrary to the *Financial Management and*  
4 *Accountability Act 1997*; or  
5 (f) abuse of a decision-making power granted under  
6 Commonwealth legislation; or  
7 (g) a misuse of public resources (other than an alleged misuse  
8 based on mere disagreement over policy that may properly be  
9 adopted about amounts, purposes or priorities of  
10 expenditure); or  
11 (h) an act or omission that constitutes an offence under a law of  
12 the Commonwealth; or  
13 (i) an act or omission that involves a substantial risk of:  
14 (i) injury to a person; or  
15 (ii) prejudice to the security of the Commonwealth; or  
16 (iii) a significant impact on a matter of national  
17 environmental significance; or  
18 (j) detrimental action against any person as a result of a public  
19 interest disclosure.

20 ***public official*** includes:

- 21 (a) any person employed by the Commonwealth of Australia,  
22 whether as an Australian Public Service employee or by any  
23 other Commonwealth body or agency;  
24 (b) a senator or member of the House of Representatives;  
25 (c) a judicial officer;  
26 (d) a person, organisation or corporation contracted to provide  
27 goods or services to a Commonwealth department or agency;  
28 (e) an employee of a person, organisation or corporation  
29 contracted to provide goods or services to a Commonwealth  
30 department or agency;  
31 (f) a person undertaking any activities as a volunteer subject to  
32 the supervision of a Commonwealth department or agency;  
33 (g) a person employed under the *Members of Parliament (Staff)*  
34 *Act 1984*;  
35 (h) a member of the Australian Defence Force;

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- 1 (i) a person who has occupied, but no longer occupies, one of  
2 the positions described in this definition, but only with  
3 respect to conduct which occurred while he or she occupied a  
4 position described in this definition.

5 **6 Parliamentary immunity not affected**

- 6 (1) Nothing in this Act affects the immunity of proceedings in  
7 Parliament under section 49 of the Constitution and the  
8 *Parliamentary Privileges Act 1987*.
- 9 (2) A public interest disclosure made to the President of the Senate or  
10 the Speaker of the House of Representatives under section 8 may  
11 be referred by the President or the Speaker to a committee of the  
12 Senate or the House of Representatives, as the case may be, in  
13 accordance with a procedure of that House, or to the Senate or the  
14 House of Representatives, respectively.  
15

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2 **Part 2—Public interest disclosures**

3 **Division 1—When a public interest disclosure is made**

4 **7 Public interest disclosures**

5 (1) Any public official who discloses public interest information in  
6 accordance with this Part, makes a public interest disclosure.

7 (2) A public official who makes a public interest disclosure has the  
8 legal rights and protections afforded by Part 3 of this Act.

9 **8 Disclosures to proper authorities**

10 (1) Unless section 9 applies to a disclosure, a public official may only  
11 make a public interest disclosure to a proper authority.

12 (2) For the purposes of subsection (1), a proper authority is, in relation  
13 to any public interest disclosure:

14 (a) any person who directly or indirectly supervises the public  
15 official in the performance of his or her public function; or

16 (b) any officer of the public official's agency who has the task of  
17 receiving or taking action on the type of information being  
18 disclosed; or

19 (c) any agency with jurisdiction under Commonwealth  
20 legislation to investigate or otherwise deal with the  
21 information contained in the disclosure; or

22 (d) the Ombudsman or Deputy Ombudsman appointed under the  
23 *Ombudsman Act 1976*, irrespective of whether the  
24 Ombudsman or Deputy Ombudsman would have jurisdiction  
25 to investigate the information were it not for this Act.

26 (3) For the purposes of subsection (1), a proper authority is also:

27 (a) where the public interest information relates to a specific  
28 agency—the agency head; or

29 (b) where the information relates to a possible criminal  
30 offence—a member of the Australian Federal Police; or

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- 1 (c) where the information relates to a Commonwealth law  
2 enforcement agency—the Australian Commission for Law  
3 Enforcement Integrity; or  
4 (d) where the information relates to a Commonwealth  
5 intelligence or security service—the Inspector-General of  
6 Intelligence and Security; or  
7 (e) where the information relates to the misuse of public  
8 resources—the Auditor-General; or  
9 (f) where the information relates to a member of the Australian  
10 Defence Force—the Defence Force Ombudsman; or  
11 (g) where the information relates to conduct contrary to the  
12 Australian Public Service Code of Conduct—the Public  
13 Service Commissioner; or  
14 (h) where the information relates to conduct contrary to the  
15 Parliamentary Service Code of Conduct—the Parliamentary  
16 Service Commissioner; or  
17 (i) where the information relates to a senator or a member of the  
18 House of Representatives—the President of the Senate or the  
19 Speaker of the House of Representatives, as the case  
20 requires; or  
21 (j) where the information relates to a judicial officer—the Chief  
22 Justice of the High Court of Australia, the Chief Justice of  
23 the Federal Court of Australia, the Chief Justice of the  
24 Family Court of Australia or the Chief Magistrate of the  
25 Federal Magistrates Court, as the case requires.
- 26 (4) If a proper authority establishes a procedure whereby a public  
27 official is permitted to disclose public interest information to a  
28 third party, including an independent contractor, for the purposes  
29 of subsections (2) and (3), then information disclosed to that third  
30 party will be taken to be a public interest disclosure as if made to  
31 the proper authority.

32 **9 Disclosure to persons other than proper authorities**

- 33 (1) A public official may make a public interest disclosure to a senator  
34 or member of the House of Representatives if:  
35 (a) under all the circumstances, it is reasonable for the public  
36 official to make the public interest disclosure; and

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- 1 (b) the disclosure has already been made to a proper authority  
2 under section 8, but has not been acted upon, to the  
3 knowledge of the public official, within 6 months of the  
4 disclosure; or  
5 (c) the disclosure has already been made to a proper authority  
6 under section 8, and acted upon, but it is reasonable for the  
7 public official to believe that the action was not adequate or  
8 appropriate; or  
9 (d) the disclosure concerns especially serious conduct, and  
10 exceptional circumstances exist to justify the public official  
11 making the disclosure.
- 12 (2) A public official may make a public interest disclosure to a  
13 journalist if:  
14 (a) the public official does not make the disclosure for purposes  
15 of personal gain; and  
16 (b) under all the circumstances, it is reasonable for the public  
17 official to make the public interest disclosure; and  
18 (c) the disclosure has already been made to a proper authority  
19 under section 8, or a senator or member of the House of  
20 Representatives under subsection (1), but has not been acted  
21 upon, to the knowledge of the public official, within 6  
22 months of the disclosure; or  
23 (d) the disclosure has already been made to a proper authority  
24 under section 8 or a senator or member of the House of  
25 Representatives under subsection (1), and acted upon, but it  
26 is reasonable for the public official to believe that the action  
27 was not adequate or appropriate; or  
28 (e) the disclosure concerns especially serious conduct, and  
29 exceptional circumstances exist to justify the public official  
30 making the disclosure.
- 31 (3) For the purposes of this section, in determining whether it was  
32 reasonable for a public official to make a disclosure or to hold a  
33 belief relevant to the making of a disclosure, regard must be had to:  
34 (a) whether a competent public official with the same level of  
35 seniority and experience as the public official making the  
36 disclosure would have made the disclosure; and

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**Division 1** When a public interest disclosure is made

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- 1 (b) the identity of the person to whom the disclosure was made;  
2 and  
3 (c) the seriousness of the conduct contained in the public interest  
4 information; and  
5 (d) whether the relevant conduct was continuing or likely to  
6 occur in the future; and  
7 (e) the substance of any action which a proper authority, a  
8 senator or a member of the House of Representatives has  
9 taken or might reasonably be expected to have taken with  
10 respect to a disclosure; and  
11 (f) any procedures relevant to the making, receipt or  
12 investigation of public interest disclosures, prescribed by  
13 regulation or published by a proper authority in accordance  
14 with this Act; and  
15 (g) whether the public official making the disclosure complied  
16 with any procedures prescribed by regulation or published by  
17 a proper authority in accordance with this Act.
- 18 (4) Determinations as to whether it is or was reasonable, under this  
19 section, for a public official to make a disclosure or hold a belief  
20 relevant to the making of a disclosure, are questions for a court,  
21 commission or tribunal to decide when determining the liabilities,  
22 rights or entitlements of any person or body under Part 3.

**10 Disclosures remain disclosures in certain circumstances**

- 24 (1) A public official who discloses public interest information under  
25 this Part, whose identity is not initially known to a proper  
26 authority, but whose identity subsequently becomes known to that  
27 or another proper authority, is to be taken as having always made a  
28 public interest disclosure.

29 Note: This subsection means that an anonymous disclosure must be acted on  
30 in accordance with this Part, and attracts the protections in Part 3,  
31 notwithstanding that it is anonymous.

- 32 (2) If a public official provides further information relating to a public  
33 interest disclosure, the further information is protected by this Act  
34 as though it were a public interest disclosure.
- 35 (3) Subsection (2) applies regardless of:

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- 1 (a) whether the public official providing further information also  
2 made the initial public interest disclosure; and  
3 (b) whether the further information is provided voluntarily or in  
4 response to a request or requirement under this or any other  
5 Act.
- 6 (4) If a public official discloses public interest information to a person  
7 in an honest and reasonable belief that the person is a proper  
8 authority for the purposes of section 8, the public official will be  
9 taken as having made a public interest disclosure even if his or her  
10 belief is mistaken.
- 11 (5) A public interest disclosure may be made under this Act:  
12 (a) even though matters to which the disclosure relates occurred  
13 before the commencement of this Act; and  
14 (b) whether or not the person making the disclosure is able to  
15 identify any person whom the information concerns.  
16

Section 11

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2 **Division 2—Obligations of a proper authority to whom a**  
3 **disclosure is made**

4 **11 Obligation to carry out investigation**

- 5 (1) A proper authority must investigate or cause to be investigated  
6 public interest information disclosed to it under this Act if the  
7 disclosure relates to:  
8 (a) the authority;  
9 (b) a public officer or a public sector contractor of the authority;  
10 or  
11 (c) a matter or person that the authority has a function or a power  
12 to investigate.
- 13 (2) If public interest information is disclosed to a proper authority  
14 under this Act, who is not a proper authority in relation to the  
15 information disclosed, the person must refer the information to a  
16 more appropriate proper authority.
- 17 (3) If public interest information is disclosed to a proper authority  
18 under paragraph 8(2)(a) who is not also a proper authority under  
19 paragraph 8(2)(b), the proper authority must refer the information  
20 to either:  
21 (a) a proper authority under paragraph 8(2)(b) within the same  
22 agency or body; or  
23 (b) another more appropriate proper authority.
- 24 (4) If public interest information is disclosed to a proper authority  
25 under this Act, but the authority considers that another proper  
26 authority would be more appropriate to investigate the information,  
27 the authority may refer the information to the more appropriate  
28 proper authority.
- 29 (5) If public interest information is referred to a proper authority under  
30 subsection (2), (3) or (4), this section applies to that proper  
31 authority.

- 1 (6) A proper authority may decline to investigate, or may discontinue  
2 the investigation of, a matter raised by a disclosure if the authority  
3 considers that:
- 4 (a) the matter is trivial; or
  - 5 (b) the disclosure is vexatious; or
  - 6 (c) there is no reasonable prospect of obtaining sufficient  
7 evidence due to the nature of the matters alleged or the time  
8 that has elapsed since the occurrence of the matter; or
  - 9 (d) the matter has been or is being adequately investigated or  
10 otherwise dealt with by any person, including a court or  
11 tribunal, to whom the same or a like disclosure of public  
12 interest information has been made; or
  - 13 (e) the matter has been or would be more appropriately resolved  
14 by private legal action by a complainant; or
  - 15 (f) the disclosure does not contain public interest information  
16 under this Act, notwithstanding that it reasonably appeared to  
17 do so at the time the disclosure was made.
- 18 (7) If a proper authority declines to investigate or discontinues the  
19 investigation of a matter in accordance with subsection (6), the  
20 proper authority must immediately notify the Ombudsman of this  
21 decision.
- 22 (8) If a proper authority determines to investigate a matter contained in  
23 a public interest disclosure, the proper authority must notify the  
24 Ombudsman of the commencement of the investigation, the nature  
25 of the disclosure, and the subsequent results of the investigation,  
26 according to the procedure established by Ombudsman for this  
27 purpose under Part 4.
- 28 (9) If, having investigated a public interest disclosure, a proper  
29 authority determines that any public official or body may be, may  
30 have been, or may in the future be, involved in conduct contrary to  
31 the public interest, the proper authority must take appropriate  
32 action to:
- 33 (a) prevent the conduct to which the disclosure relates from  
34 continuing or occurring in future; or
  - 35 (b) refer the matter to another proper authority, body or  
36 organisation having power to take further action; or

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- 1 (c) commence disciplinary or criminal action, or enable  
2 disciplinary or criminal proceedings to be commenced,  
3 against a person responsible for the conduct.

4 **12 Risk assessment by proper authority**

- 5 (1) A proper authority who receives a public interest disclosure must,  
6 at the earliest practicable time, make or cause to be made an  
7 assessment of the risks that detrimental action will be taken against  
8 any person as a result of the disclosure.
- 9 (2) A proper authority who investigates or refers a public interest  
10 disclosure must ensure that all actions by the authority under this  
11 Act have due regard to the risk assessment made under  
12 subsection (1) or any similar later assessments.

13 **13 Proper authority to notify official of action taken**

- 14 (1) If a proper authority receives a public interest disclosure and  
15 declines to investigate or discontinues the investigation of a matter  
16 under subsection 11(6), the authority must as soon as practicable  
17 notify the public official who made the disclosure of:  
18 (a) the decision not to investigate, or to discontinue the  
19 investigation; and  
20 (b) the reasons for the decision; and  
21 (c) the fact that this decision has been notified to the  
22 Ombudsman under subsection 11(7).
- 23 (2) If a proper authority decides to investigate any aspect of a public  
24 interest disclosure, the authority must, subject to section 14, not  
25 more than 3 months after receiving the disclosure, notify the public  
26 official who made the disclosure of the action taken or proposed to  
27 be taken in relation to the disclosure.
- 28 (3) A public official who makes a public interest disclosure may  
29 request a proper authority to provide a progress report on the action  
30 being taken in relation to the disclosure.
- 31 (4) If an investigation into a public interest disclosure is not complete,  
32 the proper authority investigating the disclosure must as soon as  
33 practicable provide a progress report in response to a request under

- 1 subsection (3), unless in all the circumstances it is not reasonable  
2 to do so.
- 3 (5) If an investigation into a public interest disclosure is complete, the  
4 proper authority who investigated the disclosure must advise the  
5 public official who made the disclosure of:
- 6 (a) the outcome of the investigation and any action the proper  
7 authority has taken or proposes to take as a result of the  
8 investigation; and
- 9 (b) the reasons for taking the action that has been taken or that is  
10 proposed to be taken, or if no action is to be taken, the  
11 reasons for not taking any action.
- 12 (6) This section only applies if the identity of the public official who  
13 made the disclosure is known, or becomes known.

#### 14 **14 Limitation on information provided by proper authority**

- 15 A proper authority must not, in a notification or report under  
16 section 13, give information that, in the authority's opinion, would  
17 be likely to affect adversely:
- 18 (a) any person's safety;
- 19 (b) the investigation of an offence or possible offence; or
- 20 (c) necessary confidentiality about the existence or identity of  
21 any person who has provided information to the investigation  
22 other than the public official being given the information.

#### 23 **15 Confidentiality**

- 24 (1) A person must not give information to any other person that might  
25 identify or tend to identify anyone as a public official who has  
26 made a public interest disclosure.
- 27 (2) Subsection (1) does not apply if:
- 28 (a) the public official who made the public interest disclosure  
29 consents to the giving of the information; or
- 30 (b) the giving of the information is necessary in order to enable  
31 the matter to be investigated effectively; or
- 32 (c) the giving of the information is necessary in order to enable  
33 the provision of support, protection or assistance (including

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**Division 2** Obligations of a proper authority to whom a disclosure is made

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- 1                                    legal or counselling assistance) to any person as a result of  
2                                    the disclosure; or
- 3                                    (d) the information is authorised or required to be given by law,  
4                                    including in satisfaction of the rules of natural justice; or
- 5                                    (e) the giving of the information was for official purposes and in  
6                                    the public interest; or
- 7                                    (f) the public interest disclosure was made under section 9, and  
8                                    the identity of the public official is already in the public  
9                                    domain.
- 10                                   (3) A reasonable time before giving the information in the  
11                                   circumstances described in paragraph (2)(b), (c), (d) or (e), the  
12                                   person giving the information must take all reasonable steps to  
13                                   advise the public official whose identity is to be disclosed:
- 14                                       (a) that the information is to be given; and  
15                                       (b) the reason that the information is being given.
- 16                                   (4) A person must not give information to any other person that might  
17                                   identify or tend to identify anyone as a person about whom a public  
18                                   interest disclosure has been made, or to whom it relates.
- 19                                   (5) Subsection (4) does not apply if:
- 20                                       (a) the person about whom the public interest disclosure was  
21                                       made, or to whom it relates, consents to the giving of the  
22                                       information; or
- 23                                       (b) the giving of the information is necessary in order to enable  
24                                       the matter to be investigated effectively; or
- 25                                       (c) the giving of the information is necessary in order to enable  
26                                       the provision of support, protection or assistance (including  
27                                       legal or counselling assistance) to any person as a result of  
28                                       the disclosure; or
- 29                                       (d) the information is authorised or required to be given by law;  
30                                       or
- 31                                       (e) the giving of the information was for official purposes and in  
32                                       the public interest; or
- 33                                       (f) the giving of the information is necessary for the purposes of  
34                                       action under section 11(8) or any other action arising from an  
35                                       investigation, including reports authorised by this or any  
36                                       other Act; or

- 1 (g) there are reasonable grounds to believe that the information  
2 must be given to prevent or minimise the risk of injury to any  
3 person or damage to any property; or  
4 (h) the public interest disclosure was made under section 9 of the  
5 Act, and the identity of the person concerned is already in the  
6 public domain.
- 7 (6) If a person gives information contrary to this section, and the  
8 person is a public official, an agency head may impose sanctions  
9 against that official in accordance with section 15 of the *Public*  
10 *Service Act 1999*, as though the official had breached the  
11 Australian Public Service Code of Conduct.
- 12 (7) If a person gives information contrary to this section, and the  
13 giving of the information causes detriment to or contributes to  
14 detrimental action under this Act, proceedings may be taken  
15 against the person for an offence under section 18 or for liability  
16 under section 21, or both.

## 17 **16 Relationship with other Acts**

- 18 (1) If a matter contained in a public interest disclosure also constitutes  
19 a complaint, allegation, matter or information under another Act, a  
20 proper authority must investigate or deal with the matter in  
21 accordance with that Act notwithstanding that it is also a public  
22 interest disclosure under this Act.
- 23 (2) If a proper authority has powers under another Act to investigate or  
24 otherwise deal with any matter contained in a public interest  
25 disclosure, the disclosure is to be taken as a complaint, allegation,  
26 matter or information to which those powers apply,  
27 notwithstanding that the disclosure may not have been expressly  
28 made under that Act.
- 29 (3) If a proper authority has powers or is subject to requirements under  
30 another Act in relation to the investigation of any matter contained  
31 in a public interest disclosure, the provisions of this Act are to be  
32 taken as also applying to the investigation of the disclosure, other  
33 than in the event of direct inconsistency, in which case the  
34 provisions of the other Act will prevail.

**Part 2** Public interest disclosures

**Division 2** Obligations of a proper authority to whom a disclosure is made

**Section 16**

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- 1                   (4) If a proper authority declines to investigate, or discontinues the  
2                   investigation of, a matter under this Act, nothing in this Act  
3                   prevents a proper authority from investigating or otherwise dealing  
4                   with the same matter under any other Act.  
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**Part 3—Protection**

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**17 Immunity for public interest disclosures**

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(1) A public official who makes a public interest disclosure is not subject to any civil or criminal liability or any liability arising by way of administrative process (including disciplinary action) for making the disclosure.

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(2) Without limiting subsection (1), a public official who makes a public interest disclosure:

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(a) subject to section 25, has a defence of absolute privilege in a proceeding for defamation arising from any publication of information contained in the disclosure; and

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(b) does not commit an offence under a provision of any other Act that imposes a duty to maintain confidentiality with respect to the matter or any other restriction on the disclosure of the information; and

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(c) does not breach an obligation, by way of oath or rule of law or practice or under an agreement, requiring the person to maintain confidentiality or otherwise restricting the disclosure of information with respect to the matter; and

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(d) is not, for doing so, liable:

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(i) to any disciplinary action under a written law or code of conduct; or

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(ii) to be dismissed; or

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(iii) to have his or her employment dispensed with or otherwise terminated.

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**18 Reprisal an offence**

29

(1) A person must not take, or threaten to take detrimental action against any other person because a public official has made, or may make, a public interest disclosure.

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Penalty: 120 penalty units or imprisonment for 2 years.

Section 19

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- 1 (2) A person is guilty of an offence against this section only if the fact  
2 that a public official had made, or might make, a public interest  
3 disclosure is materially significant to the taking of the detrimental  
4 action, notwithstanding that there may have also been other  
5 grounds for taking the action.
- 6 (3) Proceedings for an offence against this section may be brought by:  
7 (a) the Director of Public Prosecutions; or  
8 (b) the Australian Federal Police; or  
9 (c) a proper authority who has investigated the public interest  
10 disclosure to which the alleged offence relates; or  
11 (d) the agency head who employs, or employed, the public  
12 official who made the public interest disclosure to which the  
13 alleged offence relates; or  
14 (e) if the victim of the alleged offence is an Australian Public  
15 Service employee—the Public Service Commissioner; or  
16 (f) the Ombudsman; or  
17 (g) the victim of the alleged offence.
- 18 (4) Proceedings for an offence against this section must be brought  
19 within 2 years of the occurrence of the alleged offence.

20 **19 Criminal Code to apply**

21 Division 11 of the *Criminal Code* applies to all offences in this  
22 Part.

23 Note: Division 11 of the *Criminal Code* extends criminal liability to those  
24 who, for instance, attempt to commit an offence of inciting others to  
25 commit an offence.

26 **20 Remedies for detrimental action—employment appeals**

- 27 (1) This section applies to a public official who, under an Act, may  
28 appeal against, or apply for a review of, any of the following  
29 actions:  
30 (a) disciplinary action taken against the official;  
31 (b) the appointment or transfer of the official or another public  
32 official to a position as a public official; or  
33 (c) unfair treatment of the official.

- 1 (2) Whether or not an Act specifies grounds for the appeal or  
2 application, the official may also appeal or apply to have the action  
3 set aside because it was detrimental action taken in relation to a  
4 public interest disclosure.
- 5 (3) Subsection (2) applies even if the decision on the hearing of the  
6 appeal or application is in the form of a recommendation.

## 7 **21 Remedies for detrimental action—civil liability**

- 8 (1) If a person (the *defendant*), whether intentionally or otherwise:  
9 (a) takes or threatens to take detrimental action against another  
10 person (the *claimant*) because a public official has made or  
11 may make a public interest disclosure; or  
12 (b) fails to take action in fulfilment of a duty, under this or any  
13 other Act, to protect another person (the *claimant*) from  
14 detrimental action because a public official has made or may  
15 make a public interest disclosure; and  
16 (c) the claimant suffers loss or damage (whether economic or  
17 non-economic) as a result of the actual or threatened action,  
18 or the failure;  
19 the claimant may recover the amount of loss or damage by  
20 proceedings against the defendant.
- 21 (2) A person is liable under subparagraph (1)(a)(i) only if the fact that  
22 a public official had made, or might make, a public interest  
23 disclosure was a ground of any significance in the taking of the  
24 detrimental action, notwithstanding that there also may have been  
25 other grounds for the taking of the action.
- 26 (3) In proceedings pursuant to subparagraph (1)(a)(ii), it is a defence  
27 for the defendant to prove that he or she:  
28 (a) was not knowingly involved in the detrimental action; and  
29 (b) did not know and could not reasonably have been expected to  
30 know about the detrimental action; and  
31 (c) could not, by the exercise of reasonable care, have prevented,  
32 stopped, reversed or minimised the detrimental action.
- 33 (4) Proceedings for loss or damage under this section may also be  
34 brought by a proper authority, with the consent of the claimant.
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Section 22

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- 1 (5) If an application for compensation is brought by a proper authority,  
2 the authority is not required to give undertakings as to damages or  
3 costs, and unless exceptional circumstances apply, must not be  
4 required to pay the defendant's costs.
- 5 (6) Proceedings under this section must be commenced within 6 years  
6 after the day on which the cause of action arose.
- 7 (7) In proceedings under this section, a finding of fact or guilt made by  
8 a court in proceedings for an offence under section 18 is prima  
9 facie evidence of detrimental action.

10 **22 Remedies for detrimental action—forum and quantum**

- 11 (1) If proceedings pursuant to section 21 arise between a claimant who  
12 is an employee or a former employee, and a defendant who is or  
13 was the claimant's employer, the proceedings may be taken in  
14 either:
- 15 (a) the Australian Industrial Relations Commission, as if hearing  
16 an application for relief under section 643 of the *Workplace*  
17 *Relations Act 1996* but without limitation as to the type of  
18 detrimental action suffered; or
- 19 (b) the Federal Court or the Federal Magistrates Court, as if  
20 hearing an application for a civil remedy under section 320 or  
21 413 of the *Workplace Relations Act 1996* but without  
22 limitation as to the circumstances giving rise to the  
23 proceedings.
- 24 (2) If proceedings pursuant to section 21 arise between any other  
25 persons, the proceedings may be taken in either:
- 26 (a) the Human Rights and Equal Opportunity Commission, or  
27 the Federal Court, or the Federal Magistrates Court, as if  
28 hearing a complaint of unlawful discrimination under  
29 Part IIB of the *Human Rights and Equal Opportunity*  
30 *Commission Act 1986* but without limitation as to the type of  
31 detrimental action suffered; or
- 32 (b) any other federal or State court of competent jurisdiction.
- 33 (3) Irrespective of forum, the commission, tribunal or court hearing the  
34 proceedings pursuant to section 21 may award such compensation

1 for loss and damage as it sees fit, including exemplary damages,  
2 without limit as to quantum.

### 3 **23 Injunctions**

- 4 (1) If a person (the *defendant*) has taken, takes or proposes to take  
5 detrimental action against another person (the *claimant*) because or  
6 substantially because a public official has made or may make a  
7 public interest disclosure, the claimant may apply to the Federal  
8 Court or the Federal Magistrates Court for:
- 9 (a) an injunction restraining the person from taking the action; or
  - 10 (b) if the defendant is a Commonwealth officer, a writ of  
11 certiorari, mandamus or prohibition to prevent the  
12 detrimental action.
- 13 (2) In response to an application under subsection (1), the Federal  
14 Court or the Federal Magistrates Court may make such orders and  
15 grant such injunctive relief as it sees fit.
- 16 (3) An application for injunctive relief under this section may also be  
17 brought by a proper authority, with the consent of the claimant.
- 18 (4) If an application for injunctive relief is brought by a proper  
19 authority, the authority is not required to give undertakings as to  
20 damages or costs, and unless exceptional circumstances apply,  
21 must not be required to pay the defendant's costs.

### 22 **24 Liability of person disclosing unaffected**

- 23 Notwithstanding section 17, a public interest disclosure by a public  
24 official does not affect that public official's own liability for:
- 25 (a) any matter to which the information relates, including his or  
26 her own misconduct; and
  - 27 (b) any contravention of this Act, including, without reasonable  
28 or lawful excuse:
    - 29 (i) breaches of confidentiality; or
    - 30 (ii) breaches of lawful directions regarding the conduct of  
31 an investigation, including the maintaining of secrecy  
32 and the provision of further information.

**Part 3** Protection

Section 25

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1     **25 Loss of protection**

2                     Nothing in this Part applies, or continues to apply, to any public  
3                     interest disclosure which the public official making the disclosure  
4                     knows to contain false or misleading information.

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2 **Part 4—Obligations of Agency Heads, Ombudsman**  
3 **and Public Service Commissioner**

4 **26 Internal disclosure procedures**

- 5 (1) The Ombudsman must, within one year of the commencement of  
6 this Act, publish model internal disclosure procedures (the *model*  
7 *procedures*) to guide proper authorities and Commonwealth  
8 agencies in the administration of this Act.
- 9 (2) The Ombudsman must consult the Public Service Commissioner  
10 when developing or revising the model procedures.
- 11 (3) Agency heads must, within two years of the commencement of this  
12 Act, publish internal disclosure procedures consistent with the  
13 model procedures.
- 14 (4) The internal disclosure procedures under subsection (3) must set  
15 out:
- 16 (a) why public interest disclosures are important to the agency;
  - 17 (b) who is entitled to make public interest disclosures within,  
18 about or in respect of the agency;
  - 19 (c) who are proper authorities for receiving public interest  
20 disclosures about the agency, and how they may be  
21 contacted;
  - 22 (d) how public interest disclosures are to be managed and  
23 investigated within the agency;
  - 24 (e) procedures to meet the confidentiality requirements of this  
25 Act;
  - 26 (f) how the risk of detrimental action against public officials  
27 who make public interest disclosures is to be assessed and  
28 managed;
  - 29 (g) who is responsible for informing agency employees of their  
30 entitlements and obligations under this Act;
  - 31 (h) who is responsible for providing support, guidance and  
32 protection to agency employees who make public interest  
33 disclosures under this Act; and

Section 27

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- 1 (i) how the effective implementation of the procedures will be  
2 monitored and assessed.
- 3 (5) Agency heads must, within two years of the commencement of this  
4 Act, designate a specific officer within the agency as having  
5 responsibility for coordinating the receipt, investigation,  
6 notification and referral of public interest disclosures relating to the  
7 agency.
- 8 (6) The officer designated for the purposes of subsection (5) is a  
9 proper authority pursuant to paragraph 8(2)(b) of this Act.
- 10 (7) Any agency, including any proper authority, who has a  
11 responsibility to prepare an annual report must include in their  
12 annual report information describing:
- 13 (a) the number of public interest disclosures received by the  
14 agency over the reporting period; and
- 15 (b) the number of public interest disclosures investigated over  
16 the reporting period and wholly or partly substantiated; and
- 17 (c) the results of actions taken over the reporting period as a  
18 result of investigations.

19 **27 Protection of employees**

- 20 (1) Agency heads must take reasonable steps to protect from  
21 detrimental action, or the threat of detrimental action, any  
22 employee of the agency who makes a public interest disclosure.
- 23 (2) As soon as practicable after the agency head becomes aware of a  
24 public interest disclosure relating to it, the agency head must  
25 ensure an assessment is made of the risks that detrimental action  
26 will be taken against any employee in relation to the disclosure.
- 27 (3) If the agency head is the proper authority who received or is  
28 investigating the disclosure, the risk assessment made under  
29 section 12 satisfies the requirement under subsection (2).
- 30 (4) The agency head must ensure that all actions by the agency under  
31 this Act have due regard to the risk assessment made under  
32 subsection (2), and any similar later assessments.

- 1 (5) If an employee of an agency, or a person directly or indirectly  
2 responsible for supervising an employee, considers that:  
3 (a) it is likely that detrimental action will be taken against the  
4 employee; and  
5 (b) relocation of the employee to an alternative position provides  
6 the only way to remove or reduce the risk of detrimental  
7 action;  
8 an agency head must, with the consent of the employee, do  
9 everything necessary and possible to relocate the employee.
- 10 (6) At the earliest practicable time after the agency head becomes  
11 aware, a proper authority or the agency head must notify the  
12 Ombudsman of:  
13 (a) any information, complaint or allegation that a person may  
14 have suffered detrimental action because of a public interest  
15 disclosure; and  
16 (b) details of any risk assessments made by or for the proper  
17 authority under section 12 or the agency head under  
18 subsection (2); and  
19 (c) advice on how the proper authority or the agency head  
20 intends to investigate or remedy the alleged detrimental  
21 action.

## 22 **28 Responsibilities of the Ombudsman—disclosures**

- 23 (1) The Ombudsman must, within a year of the commencement of this  
24 Act, publish a protocol setting out when and how proper authorities  
25 are to notify the Ombudsman of public interest disclosures  
26 pursuant to subsections 11(7) and (8).
- 27 (2) The Ombudsman may review any decision of a proper authority  
28 not to investigate a disclosure under subsection 11(6), and as a  
29 result may:  
30 (a) affirm the decision that some or all of the disclosure will not  
31 be investigated; or  
32 (b) reverse or vary the decision, so as to:  
33 (i) require the proper authority to investigate the  
34 disclosure; or

Section 28

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- 1 (ii) refer the disclosure to another proper authority to  
2 investigate; or  
3 (iii) investigate the disclosure as if it were a complaint under  
4 the *Ombudsman Act 1976*, even if the Ombudsman  
5 would not otherwise have jurisdiction to investigate  
6 such a complaint.
- 7 (3) The Ombudsman may review any decision of a proper authority to  
8 investigate a disclosure notified to him or her pursuant to  
9 subsection 11(8), and as a result may:  
10 (a) affirm the decision that some or all of the disclosure will be  
11 investigated by the proper authority; or  
12 (b) reverse or vary the decision, so as to:  
13 (i) require the proper authority to cease investigating the  
14 disclosure; or  
15 (ii) refer the disclosure to another proper authority to  
16 investigate; or  
17 (iii) investigate the disclosure as if it were a complaint under  
18 the *Ombudsman Act 1976*, even if the Ombudsman  
19 would not otherwise have jurisdiction to investigate  
20 such a complaint were it not for this Act.
- 21 (4) The Ombudsman may review the outcome of any investigation by  
22 a proper authority notified to him or her pursuant to subsection  
23 11(8), and as a result may:  
24 (a) affirm the outcome of the investigation; or  
25 (b) recommend that the matter be further investigated; or  
26 (c) refer the disclosure to another proper authority to be further  
27 investigated; or  
28 (d) further investigate the disclosure as if it were a complaint  
29 under the *Ombudsman Act 1976*, even if the Ombudsman  
30 would not otherwise have jurisdiction to investigate such a  
31 complaint were it not for this Act.
- 32 (5) In reviewing a decision of a proper authority under subsection (2)  
33 or (3) or the outcome of an investigation under subsection (4), the  
34 Ombudsman may make directions or recommendations in relation  
35 to:  
36 (a) how a proper authority should investigate a matter; and

- 1 (b) whether the Ombudsman should oversee or supervise an  
2 investigation, or conduct a joint investigation; and  
3 (c) the date by which an investigation should be completed; and  
4 (d) any measures that should be taken to protect any person or to  
5 prevent detrimental action in the course of an investigation.

- 6 (6) Subsections (2), (3), (4) and (5) do not apply to decisions about an  
7 investigation or the outcome of an investigation of a disclosure that  
8 is made or referred to a proper authority under paragraph 8(3)(i) or  
9 8(3)(j).

10 Note: This subsection means that the Ombudsman cannot reverse or vary  
11 any decision to investigate or not to investigate a disclosure, or review  
12 the outcome any investigation that concerns a member of Parliament  
13 or a judicial officer, and is confined to reporting the numbers of  
14 disclosures handled by the legislative and judicial branches in the  
15 annual report on the Act.

## 16 **29 Responsibilities of the Ombudsman—reports**

- 17 (1) After the end of each financial year, the Ombudsman must cause to  
18 be tabled in each house of the Parliament a report on:  
19 (a) the numbers and outcomes of investigations of public interest  
20 disclosures received by proper authorities under the Act; and  
21 (b) the numbers of decisions by proper authorities reviewed and  
22 varied by the Ombudsman under this section; and  
23 (c) levels of compliance with this Act; and  
24 (d) any other matter that the Ombudsman considers relevant to  
25 the operation of this Act.
- 26 (2) Agency heads must, at the end of each financial year, provide the  
27 Ombudsman with information concerning:  
28 (a) the number of public interest disclosures received by the  
29 agency over the reporting period; and  
30 (b) the number of public interest disclosures investigated and  
31 wholly or partly substantiated; and  
32 (c) the results of actions taken as a result of investigations; and  
33 (d) any other matters requested by the Ombudsman.

Section 30

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- 1 (3) The report prepared under subsection (1) must be prepared in  
2 accordance with guidelines approved by the Joint Committee of  
3 Public Accounts and Audit.
- 4 (4) In preparing a report under subsection (1), the Ombudsman:  
5 (a) must consult the Public Service Commissioner; and  
6 (b) must have regard to the reporting responsibility of the Public  
7 Service Commissioner under section 44 of the *Public Service*  
8 *Act 1999*; and  
9 (c) may enter into an arrangement with the Public Service  
10 Commissioner to report jointly on the administration of this  
11 Act in Australian Public Service agencies.
- 12 (5) The Ombudsman may at any time cause to be presented to the  
13 Parliament a report on any matter arising in connection with the  
14 exercise of his or her functions under this Act.

15 **30 Detrimental action**

- 16 (1) On notification under subsection 27(6) of any information that a  
17 person may have suffered detrimental action because of a public  
18 interest disclosure, the Ombudsman must:  
19 (a) review the information provided by the agency; and  
20 (b) subject to subsection (2), determine the most appropriate  
21 proper authority to investigate or remedy the alleged  
22 detrimental action, and refer it to that proper authority; or  
23 (c) investigate the information as if it were a complaint under the  
24 *Ombudsman Act 1976*, even if the Ombudsman would not  
25 otherwise have jurisdiction to investigate such a complaint  
26 were it not for this Act.
- 27 (2) If information that a person may have suffered detrimental action  
28 concerns an Australian Public Service employee, the Ombudsman  
29 must refer the matter to the Public Service Commissioner for  
30 inquiry under the *Public Service Act 1999*. The Ombudsman must  
31 do so even if the Ombudsman also refers the matter to any other  
32 proper authority.
- 33 (3) Subsections 28(2) to (5) apply to the investigation of information  
34 that a person may have suffered detrimental action because of a

1 public interest disclosure, including investigations by the Public  
2 Service Commissioner, in the same way that they apply to any  
3 other public interest disclosure.

4 (4) Subsections 27(6) and 28(2) to (5) and this section apply to  
5 information that a person may have suffered detrimental action  
6 because of a public interest disclosure, even if the disclosure was  
7 made or referred to a proper authority under paragraph 8(3)(i) or  
8 8(3)(j).

9 Note: This subsection means that the Ombudsman can review and act on  
10 cases of apparent reprisal arising from public interest disclosures  
11 involving the legislative and judicial branches, even though unable to  
12 review decisions and outcomes in relation to the original disclosure.

13 (5) If, after investigation by a proper authority (including the Public  
14 Service Commissioner) or after the Ombudsman's own  
15 investigation:

16 (a) the Ombudsman is satisfied there is a reasonable likelihood  
17 that a person has suffered detrimental action because of a  
18 public interest disclosure; and

19 (b) no action has been taken by any other agency or person to  
20 remedy the detrimental action, including proceedings under  
21 section 18, 21 or 23;

22 the Ombudsman must take all reasonable steps to ensure that action  
23 is taken to remedy the detrimental action, including:

24 (c) making a report under subsection 29(5); or

25 (d) bringing criminal proceedings under paragraph 18(5)(f); or

26 (e) bringing proceedings for loss or damage under subsection  
27 21(6); or

28 (f) bringing proceedings for injunctive relief under subsection  
29 23(3).

Section 31

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2 **Part 5—Miscellaneous**

3 **31 False and misleading information**

4 A person must not knowingly provide information to a proper  
5 authority under this Act, including information that the person  
6 intends to be acted on as a public interest disclosure, that is false or  
7 misleading in a material particular.

8 Penalty: 120 penalty units or imprisonment for 2 years.

9 **32 Other laws**

10 The protection given by this Act is in addition to, and does not  
11 derogate from, any privilege, protection or immunity existing apart  
12 from this Act.

13 **33 Regulations**

14 The Governor-General may make such regulations as are necessary  
15 or convenient to be prescribed for giving effect to this Act.

16 **34 Review**

- 17 (1) The Minister must cause to be carried out an independent review of  
18 the operation of this Act three years after the date of its  
19 commencement.
- 20 (2) The review must be conducted by a current or former judge of a  
21 Commonwealth, State or Territory superior court of record, a  
22 former Ombudsman, or a former member of the Administrative  
23 Appeals Tribunal (the *reviewing officer*).
- 24 (3) The reviewing officer must consider:  
25 (a) the extent to which the purposes of this Act have been  
26 attained; and  
27 (b) the administration of this Act; and  
28 (c) such other matters as appear to the reviewer to be relevant.

Section 35

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- 1                   (4) The reviewing officer must prepare a report based on the review  
2                   and, as soon as practicable after its preparation, and in any case,  
3                   within six months after the third anniversary of the commencement  
4                   of this Act, must cause the report to be presented to the Parliament.

5                   **35 Schedule(s)**

6                   Each Act that is specified in a Schedule to this Act is amended or  
7                   repealed as set out in the applicable items in the Schedule  
8                   concerned, and any other item in a Schedule to this Act has effect  
9                   according to its terms.

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## Schedule 1—Amendment of Freedom of Information Act 1982

### 1 After section 47A

Insert:

#### 47B Public interest disclosures

- (1) A document is an exempt document if it contains information that might identify or tend to identify anyone as a public official who has made a public interest disclosure in accordance with subsection 15(1) of the *Public Interest Disclosures Act 2007*.
- (2) A document is an exempt document if it contains information that might identify or tend to identify anyone as a person about whom a public interest disclosure has been made, or to whom it relates, contrary to subsection 15(4) of the *Public Interest Disclosures Act 2007*.

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## **Schedule 2—Amendment of Ombudsman Act 1976**

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### **1 After subsection 5(4)**

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Insert:

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(4A) Nothing in subsection (2) prevents the Ombudsman from  
investigating detrimental action taken against any person as a result  
of the making of a public interest disclosure under the *Public  
Interest Disclosures Act 2007*, including:

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(a) detrimental action taken by or against persons employed in  
the Australian Public Service or the service of a prescribed  
authority; and

(b) detrimental action arising from a public interest disclosure  
made about or concerning a member of Parliament or a  
judicial officer.



