

NORTHERN TERRITORY OF AUSTRALIA

PUBLIC INTEREST DISCLOSURE ACT

As in force at 31 July 2009

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 31 July 2009. Any amendments that commence after that date are not included.

PUBLIC INTEREST DISCLOSURE ACT

An Act to provide for the disclosure and investigation of improper conduct of public officers and public bodies, to protect persons making disclosures and others from reprisal, and for related purposes

Part 1 Introduction

Division 1 Preliminary matters

1 Short title

This Act may be cited as the *Public Interest Disclosure Act*.

2 Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

3 Objects of Act

The objects of this Act are:

- (a) to provide for disclosure of improper conduct on the part of public officers and public bodies; and
- (b) to protect the persons who make public interest disclosures and others from acts of reprisal; and
- (c) to ensure that:
 - (i) public interest information disclosed is properly investigated; and
 - (ii) any impropriety revealed by the investigation is properly dealt with.

Division 2 Interpretation

4 Definitions

In this Act:

acting in an official capacity, in relation to the Commissioner, a member of the Commissioner's staff or someone else, means the person is exercising powers or performing functions under this Act or exercising powers or performing functions otherwise related to the administration of this Act.

act of reprisal, see section 15(1).

Commissioner means the person holding, or acting in, the office of Commissioner for Public Interest Disclosures.

council means a council constituted under the *Local Government Act*.

discloser means a person who makes a public interest disclosure.

DPP means the person holding, or acting in, the office of Director of Public Prosecutions under the *Director of Public Prosecutions Act*.

government-owned corporation means a company of which all, or a majority of, the issued shares are held by the Territory or a public body.

harm includes all of the following:

- (a) injury, loss and damage;
- (b) intimidation and harassment;
- (c) discrimination, disadvantage and adverse treatment (including disciplinary action), in relation to employment, career, profession, trade or business.

improper conduct, see section 5.

mayor, of a council, means the mayor, president, or other person who presides over the council.

misleading information means information that is misleading in a material particular because it:

- (a) does not include relevant information; or
- (b) includes misinformation.

MLA means a member of the Legislative Assembly.

owner includes a person entitled to possession.

Police Commissioner means the Commissioner of Police.

Police Force means the Police Force of the Northern Territory.

Police Minister means the Minister administering the *Police Administration Act*.

public body, see section 6.

public interest disclosure means a disclosure, made under Part 2, of public interest information.

public interest information means information that, if true, would tend to show a public officer or public body has engaged, is engaging, or intends to engage, in improper conduct.

public officer, see section 7.

referral body, see section 22(1).

referred MLA disclosure means a public interest disclosure made about an MLA and referred by the Speaker to the Commissioner.

responsible authority, see section 8.

responsible chief executive means the following:

- (a) for a public body other than the Police Force – the person responsible for the administration or management of the body;
- (b) for the Police Force – the Police Commissioner;
- (c) for a public officer – the person responsible for the administration or management of the public body in which the public officer is employed.

responsible Minister means:

- (a) for a public body other than a council – the Minister responsible for the public body; or
- (b) for a council – the Minister responsible for local government;
or

- (c) for a public officer – the Minister responsible for the public body in which the public officer is employed or, if the public body is a council, the Minister responsible for local government.

witness means an individual who, in connection with an investigation under this Act, is required to answer questions, to provide information or to produce documents or things.

5 Improper conduct

- (1) Conduct on the part of a public body or public officer in, or related to, the performance of official functions is **improper conduct** if:
- (a) the conduct involves 1 or more of the following and constitutes a criminal offence or, if engaged in by a public officer, reasonable grounds for terminating the services of the public officer:
- (i) seeking or accepting a bribe or other improper inducement;
 - (ii) any other form of dishonesty;
 - (iii) inappropriate bias;
 - (iv) a breach of a public trust;
 - (v) misuse of confidential information; or
- (b) the conduct involves 1 or more of the following (whether or not the conduct constitutes a criminal offence or, if engaged in by a public officer, reasonable grounds for terminating the services of the public officer):
- (i) substantial misuse or mismanagement of public resources;
 - (ii) substantial risk to public health or safety;
 - (iii) substantial risk to the environment;
 - (iv) substantial maladministration that specifically, substantially and adversely affects someone's interests.
- (2) The following also constitute improper conduct:
- (a) an act of reprisal;
 - (b) a conspiracy or attempt to engage in improper conduct that constitutes a criminal offence.

(3) In this section:

substantial maladministration means conduct that includes action or inaction of a serious nature that is any of the following:

- (a) contrary to law;
- (b) unreasonable, unjust, oppressive, or improperly discriminatory;
- (c) based wholly or partly on improper motives.

6 Public bodies

(1) Each of the following is a ***public body***:

- (a) an Agency;
- (b) a council;
- (c) the Police Force;
- (d) a body, whether incorporated or not, established under an Act for a public purpose;
- (e) a body whose members, or a majority of whose members, are appointed by the Administrator or a minister;
- (f) a government-owned corporation;
- (g) a body (whether incorporated or not) prescribed by regulation:
 - (i) that is supported directly or indirectly by government funds or other assistance; or
 - (ii) over which the Territory is in a position to exercise control;
- (h) a nursing home;
- (i) a public hospital;
- (j) a university.

(2) However, a reference in this Act to a public body does not extend to any of the following:

- (a) a court;

(b) a board, commission, tribunal or other body, established under an Act, that has judicial or quasi-judicial functions in the performance of its deliberative functions.

(3) In this section:

nursing home means a nursing home within the meaning of the *Medical Services Act*, other than a nursing home conducted under a licence granted under the *Private Hospitals and Nursing Homes Act*.

public hospital means premises declared under section 6(2) of the *Medical Services Act* to be a hospital, other than a hospital conducted under a licence granted under the *Private Hospitals and Nursing Homes Act*.

university means:

- (a) Charles Darwin University; or
- (b) Batchelor Institute of Indigenous Tertiary Education.

7 Public officers

(1) Each of the following is a **public officer**:

- (a) an MLA;
- (b) a member, officer or employee of a public body;
- (c) a police officer;
- (d) the holder of an office established under an Act who is appointed by the Administrator or a minister.

(2) However, a reference in this Act to a public officer does not extend to any of the following:

- (a) a Judge;
- (b) the Master of the Supreme Court;
- (c) a magistrate;
- (d) a coroner;
- (e) the DPP;
- (f) the Auditor-General;
- (g) the Ombudsman;

- (h) the Electoral Commissioner;
- (i) the Commissioner;
- (j) an officer of the Assembly as defined in the *Legislative Assembly (Powers and Privileges) Act*;
- (k) a member of the personal staff of a Judge or the Master of the Supreme Court, a magistrate or a coroner;
- (l) a member of a board, commission, tribunal or other body, established under an Act, that has judicial or quasi-judicial functions in the performance of its deliberative functions.

8 Responsible authority for public body or public officer

The **responsible authority** for a public body or public officer is as follows:

- (a) for the Speaker – the Chief Minister;
- (b) for an MLA other than the Speaker – the Speaker;
- (c) for the mayor of a council – each of the following:
 - (i) the Minister responsible for local government;
 - (ii) the chief executive officer of the council;
- (d) for another council member – each of the following:
 - (i) the mayor of the council;
 - (ii) the chief executive officer of the council;
- (e) for the chief executive officer of a council – each of the following:
 - (i) the Minister responsible for local government;
 - (ii) the mayor of the council;
- (f) for another officer or employee of a council – each of the following:
 - (i) the mayor of the council;
 - (ii) the chief executive officer of the council;
- (g) for the Police Commissioner or a Deputy or Assistant Police Commissioner – the Police Minister;

- (h) for another police officer – the Police Commissioner;
- (i) for the chief executive officer of a government-owned corporation – the Chair of the board of directors of the corporation;
- (j) for the chief executive officer of another public body – the responsible Minister;
- (k) for another public officer – the responsible chief executive of the public body for the public officer;
- (l) for a council – the Minister responsible for local government;
- (m) for another public body – the responsible Minister.

Division 3 Criminal responsibility

9 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Disclosures of public interest information

Division 1 Making public interest disclosures

10 Right to make public interest disclosure

- (1) An individual (and only an individual) may, under this Part, make a disclosure of public interest information.
- (2) A public interest disclosure cannot be based solely or substantially on:
 - (a) disagreement with a policy that may properly be adopted, including a disagreement about amounts, purposes and priorities of expenditure; or
 - (b) an employment related grievance (other than a grievance about an act of reprisal) or other personal grievance.

- (3) A public interest disclosure may be made even though:
 - (a) the discloser cannot identify the public officer or public body to which the disclosure relates; or
 - (b) the disclosure relates to conduct that occurred before the commencement of this Act.

11 How public interest disclosure is made

- (1) A public interest disclosure must be made to the following:
 - (a) if the disclosure relates to an MLA other than the Speaker – the Speaker;
 - (b) otherwise – the Commissioner or the responsible chief executive.
- (2) The public interest disclosure may be made orally or in writing, but must be made in accordance with the procedure prescribed by regulation.
- (3) A public interest disclosure may be made anonymously.

12 Referral of public interest disclosure to Commissioner

- (1) If a public interest disclosure is made to the Speaker, the Speaker may refer it to the Commissioner for investigation.
- (2) If a public interest disclosure is made to the responsible chief executive of a public body, the chief executive must refer it to the Commissioner within 14 days after receiving it.

13 Disclosure of further information treated as public interest disclosure

If a person who makes a public interest disclosure (the **original disclosure**) gives further information about the original disclosure to a person acting in an official capacity, the further information is treated as part of the original disclosure.

Division 2 Protection from liability

14 Protection from liability for making public interest disclosure

- (1) A person who makes a public interest disclosure:
 - (a) incurs no civil or criminal liability by doing so; and

- (b) does not become liable to disciplinary action, or other adverse administrative action, for doing so.
- (2) In an action for defamation, a public interest disclosure will be treated as absolutely privileged.
- (3) Subsections (1) and (2) apply even though the public interest disclosure is made in breach of an obligation of confidentiality.
- (4) However, subsections (1) and (2) do not apply to:
 - (a) a public interest disclosure that is an abuse of process; or
 - (b) a public interest disclosure if the discloser knows the information disclosed is misleading.
- (5) Despite anything to the contrary in this Part, when a person makes a public interest disclosure, the person's liability for his or her own conduct is not affected by the disclosure of that conduct.

Division 3 Protection from reprisal

15 Offence to commit act of reprisal

- (1) A person commits an ***act of reprisal*** against another if the person causes, or threatens to cause, harm to another for a prohibited reason, that is because:
 - (a) the other person or a third person:
 - (i) has made or intends to make a public interest disclosure; or
 - (ii) has complied with, or intends to comply with, a requirement imposed by a person acting in an official capacity; or
 - (iii) has cooperated or intends to cooperate with a person acting in an official capacity; and
 - (b) the person wants to obtain retribution for the disclosure, compliance or cooperation or, in the case of intended disclosure, compliance or cooperation, to discourage it.

Examples of cooperation

Voluntarily answering questions, producing documents and providing information in any other form.

- (2) A person must not commit an act of reprisal against another.

Fault elements:

The person:

- (a) knows or believes a person has acted, or intends to act, as described in subsection (1)(a); and
- (b) intends to discourage, or obtain retribution for, that act or intended act.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (3) It is a defence to a charge of an offence against subsection (2) for the defendant to prove that the prohibited reason was not a substantial reason for the conduct on which the charge is based.
- (4) A prosecution for an offence against subsection (2) must be started within 2 years after the offence is alleged to have been committed.

16 Liability for damages for act of reprisal

- (1) A person who commits an act of reprisal against another is liable in damages to the other person.
- (2) The damages may be recovered as for a tort in a court of competent jurisdiction.
- (3) A court may award exemplary damages in proceedings under this section.
- (4) An action in damages for an act of reprisal does not preclude other forms of relief.

17 Injunctive remedies for act of reprisal

- (1) The Supreme Court may grant injunctive remedies for an act of reprisal or an apprehended act of reprisal as follows:
- (a) the Court may grant a mandatory injunction requiring a person who has committed an act of reprisal to take specified action to remedy any harm suffered by the victim;
 - (b) the Court may grant an injunction to prevent the apprehended commission of an act of reprisal.

- (2) An application may be made for an injunctive remedy under this section by:
 - (a) the Commissioner; or
 - (b) a person against whom the act of reprisal has been or is about to be committed.
- (3) The Supreme Court may, in an appropriate case, make an order in the nature of an interim injunction under this section.

Division 4 Relocation of public officers

18 Request for relocation

- (1) A public officer may request relocation because of an act of reprisal, or an apprehended act of reprisal, against the officer.
- (2) The request must be made to the responsible chief executive.
- (3) The responsible chief executive may direct the public officer be relocated, within the same or another public body, if satisfied there are reasonable grounds for the request.
- (4) The public officer must not be relocated without the agreement of:
 - (a) the public officer; and
 - (b) if the relocation is to another public body – the responsible chief executive for the body.

19 Review of relocation decision

- (1) A public officer may apply, in writing, for a review of a decision made by a responsible chief executive on a request for relocation under section 18.

Note

A public sector employee who is aggrieved by the decision also has a right of review under section 59 of the Public Sector Employment and Management Act.

- (2) The application for review is made to:
 - (a) if the application is made by a public sector employee – the Commissioner for Public Employment; or
 - (b) otherwise – the Commissioner for Public Interest Disclosures.

- (3) If the review is conducted by the Commissioner for Public Employment, he or she:
 - (a) must notify the applicant, in writing, of the result of the review; and
 - (b) may exercise his or her powers to relocate the applicant within the public sector.
- (4) If the review is conducted by the Commissioner for Public Interest Disclosures, he or she:
 - (a) must notify the applicant, in writing, of the result of the review; and
 - (b) may make a recommendation to the responsible chief executive for the relocation of the applicant.
- (5) If the Commissioner for Public Interest Disclosures recommends relocation of the applicant, the responsible chief executive must respond to the recommendation, within a period fixed by the Commissioner when making the recommendation, indicating whether the responsible chief executive has implemented, or proposes to implement, the recommendation and, if not, why not.
- (6) If the Commissioner for Public Interest Disclosures is dissatisfied with the responsible chief executive's response, the Commissioner must report the matter to the responsible Minister.
- (7) In this section:

Commissioner for Public Employment, means the person holding, or acting as, the Commissioner for Public Employment under the *Public Sector Employment and Management Act*.

Part 3 Investigations

Division 1 Requirement to investigate public interest disclosures

20 Commissioner to investigate public interest disclosure

- (1) The Commissioner must investigate all public interest disclosures made or referred to the Commissioner under Part 2, Division 1.
- (2) Subsection (1) is subject to another provision of this Part.

21 Cases when an investigation is not required

- (1) The Commissioner is not required to investigate, and if an investigation has started may discontinue the investigation of, a public interest disclosure if the Commissioner is or becomes satisfied:
 - (a) the disclosure is an abuse of process; or
 - (b) the disclosure is too trivial to warrant investigation; or
 - (c) there has been excessive delay, of at least 12 months, on the part of the discloser in making the disclosure; or
 - (d) the disclosure relates to matters occurring so long ago that there is no reasonable prospect of a successful investigation; or
 - (e) the subject-matter of the disclosure has been already investigated; or
 - (f) the subject-matter of the disclosure is the subject of proceedings before a court or tribunal, or would be more appropriately dealt with by a court or tribunal; or
 - (g) the disclosure contains misleading information.
- (2) If, under subsection (1), the Commissioner decides not to investigate a public interest disclosure or to discontinue the investigation of a public interest disclosure, within 14 days after the date of the decision, the Commissioner must give written notice of the decision and the reasons for it to:
 - (a) the discloser; and
 - (b) if, under section 12, the disclosure was referred to the Commissioner – the person who referred it.

Division 2 Referral of public interest disclosures for investigation by other entities

22 Referral to other body

- (1) If the Commissioner considers it appropriate, the Commissioner may refer a public interest disclosure, other than a referred MLA disclosure, to any of the following (each of whom is a **referral body**):
 - (a) the Ombudsman;

- (b) the Police Commissioner;
- (c) the Auditor-General;
- (d) a person or body prescribed by regulation.

Note

The referral body exercises its own powers of investigation and this Act does not apply to the investigation conducted by the referral body. However, the public interest disclosure retains its protection under this Act.

- (2) If a public interest disclosure is referred to the Ombudsman, the disclosure is to be dealt with as a complaint under the *Ombudsman Act*.

23 Right to object to referral

- (1) Before referring a public interest disclosure under section 22, the Commissioner must give written notice to the discloser about:
 - (a) the Commissioner's intention to refer the disclosure; and
 - (b) the referral body to whom the referral is to be made; and
 - (c) the discloser's right of objection under this section.
- (2) The discloser may object to the referral or to the referral to the specified referral body.
- (3) The objection must:
 - (a) be made to the Commissioner in writing within 14 days after the date of the notification or a longer period allowed by the Commissioner; and
 - (b) state the reasons for the objection.
- (4) Within 14 days after receiving the objection, the Commissioner must:
 - (a) consider the objection and the reasons for it; and
 - (b) decide whether or not to refer the public interest disclosure to the specified referral body; and
 - (c) notify the objector, in writing, of the decision.

- (5) If the decision is to refer the public interest disclosure to the specified referral body, the Commissioner may, after notifying the objector of the decision:
- (a) refer the disclosure to the referral body; and
 - (b) give the referral body any information the Commissioner has about the disclosure.

Division 3 Notice of investigation

24 Notice of investigation

- (1) Before the Commissioner begins an investigation, the Commissioner must give written notice of his or her intention to conduct the investigation to each responsible authority for the public body or public officer to whom the public interest disclosure relates.
- (2) However, a notice under subsection (1) is not required if the public interest disclosure is a referred MLA disclosure.

Division 4 Procedure on investigation

25 Procedure generally

- (1) The Commissioner must conduct the investigation in private and, subject to this Division, may conduct the investigation as the Commissioner considers appropriate.
- (2) In conducting the investigation, the Commissioner:
- (a) may make inquiries the Commissioner considers appropriate; and
 - (b) may take such other steps as the Commissioner considers appropriate to obtain information relevant to the public interest disclosure; and
 - (c) may hold a formal hearing, but is not required to do so; and
 - (d) is not bound by the rules of evidence but must comply with the rules of natural justice.

26 Power to require information and documents

- (1) For an investigation, the Commissioner may ask a person:
- (a) to answer specified questions or provide specified information; or

- (b) to produce specified documents or things or documents or things of a specified kind, in the person's possession or control.
 - (2) When making a request of a person under subsection (1), the Commissioner must inform the person about the following but is not required to give any other information about the nature or purpose of the investigation:
 - (a) that the request is made for the purposes of an investigation;
 - (b) if the person is under investigation – that fact.
 - (3) A request under subsection (1), and accompanying information under subsection (2), may be given:
 - (a) if an oral response to a question is required – orally; or
 - (b) otherwise – by written notice given to the person to whom the request is addressed.
 - (4) A person requested, by written notice under this section, to provide written information must, if the notice requires, verify the information by statutory declaration.
 - (5) A person to whom a request is addressed under this section must comply with it:
 - (a) if an oral response to a question is required – immediately; or
 - (b) otherwise – within a reasonable time stated in the request.
- Fault element: Strict liability offence.
- Maximum penalty: 100 penalty units.
- (6) It is a defence to a charge of an offence against subsection (5) if the defendant establishes a reasonable excuse for non-compliance with the request.
 - (7) If a document or other thing is produced to the Commissioner in connection with an investigation:
 - (a) the Commissioner may retain possession of it for a reasonable period and may make copies of, or take extracts from, it; and
 - (b) while it remains in the Commissioner's possession, the Commissioner must allow the owner reasonable access to it.

27 Power to require person to attend for examination

- (1) For an investigation, the Commissioner may require a person to attend for examination before the Commissioner.
- (2) The person must be given a written notice:
 - (a) requiring the person to attend for examination at a specified time and place; and
 - (b) specifying the nature of the investigation; and
 - (c) if the person is under investigation – stating that fact.
- (3) The notice may require the person to bring and produce to the Commissioner specified documents or things, or documents or things of a specified kind, in the person's possession or control relevant to the investigation.
- (4) A person required to attend before the Commissioner for examination may, with the Commissioner's approval, be represented by a legal practitioner or agent.
- (5) The legal practitioner or agent may make submissions to the Commissioner and, with the Commissioner's approval, ask witnesses questions relevant to the investigation.
- (6) The Commissioner may require a person attending for examination to do 1 or more of the following:
 - (a) to take an oath or affirmation to answer all questions truthfully;
 - (b) to answer a question relevant to the examination asked by the Commissioner or by another person present at the examination;
 - (c) to produce at the examination any documents or other things in the person's possession or control relevant to the investigation.
- (7) The Commissioner may administer an oath or affirmation for an examination.
- (8) A person of whom a requirement is made under this section must not refuse or fail to comply with it.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

- (9) It is a defence to a charge of an offence against subsection (8) if the defendant establishes a reasonable excuse for non-compliance with the requirement.
- (10) If a document or other thing is produced to the Commissioner in connection with an investigation:
 - (a) the Commissioner may retain possession of it for a reasonable period and may make copies of, or take extracts from, it; and
 - (b) while it remains in the Commissioner's possession, the Commissioner must allow the owner reasonable access to it.

28 Investigation at premises of public officer or public body

- (1) For an investigation, the Commissioner may do 1 or more of the following at any reasonable time:
 - (a) enter and inspect premises occupied by a public officer or public body, other than premises, or the part of premises, used as a residence;
 - (b) take into the premises the persons, equipment and materials reasonably required for the investigation;
 - (c) take copies of, or extracts from, documents located at the premises.
- (2) A public officer at the premises must, at the request of the Commissioner, give reasonable assistance to the Commissioner for exercising the powers under this section.

29 Assistance for conducting investigation

- (1) The Commissioner may ask the Police Commissioner or a responsible chief executive to provide assistance the Commissioner reasonably requires for conducting an investigation.
- (2) The Commissioner may make an arrangement with the Police Commissioner or the responsible chief executive for a public body to have a police officer or member of staff of the body assist in the conduct of an investigation.

Division 5 Preliminary opportunity to comment on possible adverse findings

30 Opportunity to comment before adverse report

- (1) While conducting an investigation, if it appears to the Commissioner there may be grounds for making a report adverse to a public body, a public officer or another person, the Commissioner must provide an opportunity for making submissions on the matter to:
 - (a) each responsible authority for the public body or public officer; and
 - (b) any individual whose conduct would be the subject of the adverse comment.
- (2) If an adverse report is made even though a submission is made under this section, the Commissioner must ensure the submission is taken into account and fairly represented in the final report.

Division 6 Report following investigation

31 Report on investigation

- (1) After completing an investigation, the Commissioner:
 - (a) must report the findings of the investigation to each responsible authority for the public body or public officer to whom the investigation relates; and
 - (b) may (except in the case of a referred MLA investigation) make recommendations for action to be taken as a result of the findings.
- (2) The recommendations may include any of the following:
 - (a) a recommendation that the public interest disclosure be referred to an appropriate authority for further consideration;
 - (b) a recommendation that action be taken to remedy any harm arising from the improper conduct investigated;
 - (c) a recommendation that action be taken to prevent the improper conduct investigated from continuing or occurring in the future.

32 Report about implementing recommendations

- (1) If the Commissioner makes recommendations for action as a result of findings on an investigation, the Commissioner may require a responsible authority to notify the Commissioner within a stated reasonable time about the following:
 - (a) the steps taken, or intended to be taken, to give effect to the recommendations;
 - (b) if no steps have been or are intended to be taken – the reasons for inaction.
- (2) If, after considering any information provided by a responsible authority in response to the requirement, it appears to the Commissioner that insufficient steps have been taken to give effect to the recommendations within a reasonable time, the Commissioner may report to the Minister on the investigation, the recommendations and the response to the recommendations.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after receiving it.

33 Removal of material if publication not in public interest

- (1) Before giving a report to the Minister under section 32, the Commissioner must give the Police Commissioner an opportunity to consider its content.
- (2) The Police Commissioner may, by written notice, request the removal of any material the publication of which:
 - (a) may materially prejudice an ongoing investigation by a police officer; or
 - (b) would endanger the safety of any person; or
 - (c) would not otherwise be in the public interest.
- (3) The notice must state the reasons for the request.
- (4) After considering the request and the reasons for it, the Commissioner must give the Police Commissioner written notice of the Commissioner's decision and, if the request is refused, the reasons for the refusal.

34 Discloser to be informed of results of investigation

- (1) Within a reasonable time after completing an investigation, the Commissioner must give written notice of the following to the discloser:
 - (a) the findings of the investigation;
 - (b) any recommendations the Commissioner made as a result of the investigation;
 - (c) the steps taken to give effect to the recommendations.
- (2) If it appears to the Commissioner that insufficient steps have been taken within a reasonable time to give effect to any recommendation made as a result of the investigation, the Commissioner must give written notice to the discloser accordingly.
- (3) The Commissioner may disclose to the discloser any additional information about the investigation the Commissioner considers appropriate.
- (4) However, the Commissioner must not disclose the additional information without consulting:
 - (a) if the public interest disclosure is about a police officer – the Police Commissioner; or
 - (b) if the public interest disclosure is about another public officer:
 - (i) the responsible chief executive of the public body for the public officer; and
 - (ii) the Police Commissioner.

35 Referral to DPP

- (1) At any time during or after completing an investigation, the Commissioner may refer to the DPP any suspected breach of the criminal law.
- (2) When doing so, the Commissioner may hand over to the DPP material in the Commissioner's possession relevant to the suspected breach.
- (3) The Commissioner may include details of the referral in the Commissioner's report on the investigation.

- (4) If the referral relates to a suspected breach of the criminal law by a person who disclosed information about himself or herself as mentioned in section 38(2), the referral must not include information if, under that provision, it is not admissible in evidence against the person.

Part 4 Various privileges and confidential and privileged information

36 Privileges of Legislative Assembly not affected

- (1) This Act does not limit the privileges, immunities and powers of:
- (a) the Legislative Assembly or a committee of the Legislative Assembly; or
 - (b) the Speaker; or
 - (c) any other MLA.
- (2) A public interest disclosure about an MLA does not amount to a breach of the privileges of the Legislative Assembly.

37 Confidential or privileged information in context of investigation

- (1) Subject to this Part:
- (a) no obligation of secrecy or confidentiality or other restriction on disclosing information (imposed by a law of the Territory or otherwise) applies to the disclosure of information for an investigation; and
 - (b) no privilege exists to protect information from disclosure in an investigation on grounds of public interest; and
 - (c) no privilege exists in favour of the Territory or a public body to protect information from disclosure in an investigation on grounds of legal professional privilege.
- (2) However, a person is not authorised or required by this Act:
- (a) to disclose information contrary to section 38 of the *Northern Territory Aboriginal Sacred Sites Act*; or

- (b) to disclose confidential information about the decisions, proceedings or deliberations of:
 - (i) the Executive Council or a committee of the Executive Council; or
 - (ii) the Cabinet or a committee of the Cabinet; or
 - (iii) a committee of the Legislative Assembly; or
 - (iv) a committee formed to advise the Government and consisting entirely of members of the Legislative Assembly; or
 - (c) to disclose confidential information about communications among members of the Executive Council or Cabinet or among Australian governments; or
 - (d) to produce a document or to disclose information about a document that is exempt under section 45(1)(a) of the *Information Act*.
- (3) A certificate issued by the Administrator certifying that information is of a kind mentioned in subsection (2)(b) or (c) is conclusive of the fact certified.

38 Witness privileges

- (1) A witness has a reasonable excuse for refusing or failing to produce a document or to provide information if the document or information:
 - (a) relates to conduct of the witness or another individual; and
 - (b) is protected by legal professional privilege.
- (2) No privilege exists to protect a witness in an investigation from disclosing information that would tend to incriminate the witness of an offence, to show that the witness is guilty of a breach of discipline or to expose the witness to a penalty, but the information disclosed is not admissible in evidence, in civil, criminal or disciplinary proceedings against the witness except:
 - (a) proceedings for an offence against this Act; or
 - (b) civil proceedings in which a remedy is sought for an act of reprisal.

Part 5 Administration

Division 1 Commissioner for Public Interest Disclosures

39 Office of Commissioner

- (1) There is to be a Commissioner for Public Interest Disclosures.
- (2) The Commissioner is appointed by the Administrator.
- (3) A person is ineligible for appointment as the Commissioner if the person has been, within the last 3 years:
 - (a) a member of the Legislative Assembly or of the Parliament of the Commonwealth, a State or another Territory; or
 - (b) a member of a council, or the holder of an equivalent office in a State or another Territory.
- (4) The office of Commissioner may be held in conjunction with any other public office.

40 Terms and conditions of appointment

- (1) The Commissioner is to be appointed for a term of 5 years and is eligible for re-appointment.
- (2) The Commissioner holds office on conditions determined by the Administrator from time to time, including conditions about remuneration, expenses and allowances.
- (3) Before the Commissioner starts acting in an official capacity, the Commissioner must take an oath before the Administrator that he or she will faithfully, impartially and truly exercise the powers and perform the functions of Commissioner according to law.
- (4) The Commissioner must not, without the Minister's written consent, engage in paid employment outside the duties of office.
- (5) The Minister may grant the Commissioner leave of absence on conditions decided by the Minister.
- (6) The Commissioner may resign office by written notice given to the Administrator.
- (7) The Minister may, with the Commissioner's consent, retire the Commissioner on the ground of incapacity.

41 Independence

- (1) The Commissioner is not subject to direction about:
 - (a) the way the Commissioner exercises the powers or performs the functions of the Commissioner; or
 - (b) the priority given to investigations.
- (2) The Commissioner must act independently, impartially and in the public interest in exercising the powers or performing the functions of the Commissioner.

42 Termination of appointment

- (1) The Commissioner's appointment terminates if the Commissioner:
 - (a) becomes:
 - (i) a candidate for election as a member of the Legislative Assembly or of the Parliament of the Commonwealth, a State or another Territory; or
 - (ii) a member, or a candidate for election as a member, of a council or an equivalent office in a State or another Territory; or
 - (b) is found guilty of an indictable offence (in the Territory or elsewhere); or
 - (c) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit.
- (2) The Administrator may, by written notice, terminate the Commissioner's appointment if the Commissioner:
 - (a) becomes physically or mentally incapable of satisfactorily performing official duties; or
 - (b) is guilty of misconduct of a kind that would warrant dismissal under the *Public Sector Employment and Management Act* if the Commissioner were a public sector employee; or
 - (c) engages in paid employment outside the duties of office without the Minister's approval; or

- (d) is absent, without the Minister's permission and without reasonable excuse, for 14 consecutive days or 28 days in any 12 months.

43 Acting Commissioner

- (1) The Administrator or the Minister may appoint a person to act in the office of Commissioner:
 - (a) during a vacancy in the office; or
 - (b) when the Commissioner (or another Acting Commissioner) is unable, or unavailable, to perform official duties.
- (2) An appointment as Acting Commissioner may:
 - (a) if made by the Administrator – be for a term of up to 12 months; and
 - (b) if made by the Minister – be for a term of up to 3 months.
- (3) An Acting Commissioner is to be appointed on terms and conditions determined by the Administrator.
- (4) Concurrent appointments may exist under this section if the conditions of appointment distinguish the circumstances in which each appointee may act.

Division 2 Commissioner's staff

44 Staff

The Commissioner's staff consists of:

- (a) public sector employees employed in the office of the Commissioner; and
- (b) persons employed in an Agency made available by the Chief Executive Officer of the Agency under an arrangement with the Commissioner.

45 Staff not subject to external direction

In exercising powers or performing functions under this Act, a member of the Commissioner's staff is subject only to the direction of the Commissioner or another member of the Commissioner's staff.

Division 3 Delegation and guidelines

46 Delegation

The Commissioner may, in writing, delegate any of the Commissioner's powers or functions under this Act.

47 Guidelines relating to dealing with public interest disclosures and disclosers

- (1) The Commissioner must prepare and publish guidelines about:
 - (a) dealing with public interest disclosures, including investigating the disclosures; and
 - (b) protecting a discloser from an act of reprisal, including the steps to be taken within a public body for that purpose.
- (2) For subsection (1), publication on the Commissioner's internet website is sufficient.

Division 4 Annual reports and other reports

48 Annual report by Commissioner

- (1) Within 3 months after the end of each financial year, the Commissioner must give the Minister a report on the performance of the Commissioner's functions under this Act during the year.
- (2) The report must include the following:
 - (a) the number and kinds of public interest disclosures made;
 - (b) the number and kinds of public interest disclosures the Speaker referred to the Commissioner under section 12(1);
 - (c) the number and kinds of public interest disclosures investigated;
 - (d) the number and kinds of public interest disclosures the Commissioner did not investigate and the reason why they were not investigated;
 - (e) the number and kinds of investigations for which the Commissioner:
 - (i) reported findings under section 31(1)(a); and

- (ii) made recommendations under section 31(1)(b) and, in relation to the recommendations, the details of the recommendations made about each kind of investigation and the action taken for each of them.

- (3) The Minister must table a copy of the annual report in the Legislative Assembly within 6 sitting days after receiving it.

49 Other reports by Commissioner

- (1) The Commissioner may give the Minister a report on any matter arising in relation to a public interest disclosure.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after receiving it.

50 Removal of material if publication not in public interest

- (1) Before giving a report to the Minister under section 49(1), the Commissioner must give the Police Commissioner an opportunity to consider its content.
- (2) The Police Commissioner may, by written notice, request the removal of any material the publication of which:
 - (a) may materially prejudice an ongoing investigation by a police officer; or
 - (b) would endanger the safety of any person; or
 - (c) would not otherwise be in the public interest.
- (3) The notice must state the reasons for the request.
- (4) The Commissioner must consider the request and refuse it or agree to it.
- (5) The Commissioner must give the Police Commissioner written notice of the Commissioner's decision and, if the request is refused, the reasons for the refusal.

Division 5 Offences relating to administration of Act

51 Misleading information or document

- (1) A person must not give misleading information to another person acting in an official capacity.

Fault elements:

The person knows:

- (a) the information is misleading; and
- (b) the other person is acting in an official capacity.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (2) A person must not give a document containing misleading information to another person acting in an official capacity.

Fault elements:

The person knows:

- (a) the document contains misleading information; and
- (b) the other person is acting in an official capacity.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (3) Subsection (2) does not apply if the person, when giving the document:

- (a) draws the misleading aspect of the document to the other person's attention; and
- (b) to the extent to which the person can reasonably do so – gives the other person the information necessary to correct the document.

52 Obstruction of person acting in official capacity

- (1) A person must not obstruct another person acting in an official capacity.

Fault elements:

The person:

- (a) intentionally obstructs the other person; and
- (b) knows the other person is acting in an official capacity.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

- (3) In this section:

obstruct includes hinder and resist.

Division 6 Confidentiality

53 Confidentiality of information

- (1) Except as authorised under subsection (2), a person must not disclose confidential information acquired when acting in an official capacity.

Fault elements:

The person:

- (a) knows of the confidential nature of the information; and
- (b) is reckless as to the disclosure of the information.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (2) The following disclosures are authorised:

- (a) a disclosure of confidential information (other than identifying information) necessary for exercising a power or performing a function under this Act;
- (b) a disclosure of confidential information (other than identifying information) for a report or recommendation under this Act;

- (c) a disclosure of confidential information made with the consent of the person in whose favour the duty of confidentiality exists;
 - (d) a disclosure of confidential information made in connection with the prosecution, or a proposed prosecution, of an offence against this Act;
 - (e) a disclosure of confidential information made in connection with civil proceedings in which a remedy is sought for an act of reprisal;
 - (f) a disclosure of confidential information made to a legal practitioner for obtaining professional legal advice;
 - (g) a disclosure of confidential information authorised by the Commissioner.
- (3) The Commissioner may only authorise the disclosure of identifying information under subsection (2)(g) if:
- (a) the Commissioner considers natural justice requires the disclosure of the information; or
 - (b) the Commissioner considers disclosure of the information:
 - (i) is necessary for the effective investigation of a public interest disclosure; or
 - (ii) is in the public interest.
- (4) A person must not make improper use of confidential information acquired when acting in an official capacity.

Fault elements:

The person:

- (a) knows of the confidential nature of the information; and
- (b) intentionally makes improper use of the information.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (5) In this section:

confidential information means information about a public interest disclosure or the investigation of a public interest disclosure, other than information in the public domain.

identifying information means information identifying, or tending to identify, a particular individual as a discloser or a person to whom a public interest disclosure relates.

improper use, by a person of confidential information, means the person uses the information to gain some private benefit or to benefit or cause harm to someone else.

Part 6 Miscellaneous matters

54 Notices etc.

- (1) A notice under this Act may be given:
 - (a) by serving the notice on the addressee as authorised by section 25 of the *Interpretation Act*; or
 - (b) by transmission to the addressee's email address as an attachment to an email.
- (2) A requirement under this Act to give notice or information to a discloser does not apply if the public interest disclosure was made anonymously.

55 Exclusion of certain injunctive remedies

No action lies against the Commissioner:

- (a) to restrain the Commissioner from carrying out, or to compel the Commissioner to carry out, an investigation; or
- (b) to restrain the Commissioner from reporting on, or to compel the Commissioner to report on, the findings of an investigation; or
- (c) to restrain the Commissioner from making, or to compel the Commissioner to make, a recommendation about a public officer or public body in a report of an investigation.

56 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith when acting, or purportedly acting, in an official capacity.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

- (3) This section does not derogate from Part VIIA of the *Police Administration Act*.
- (4) If a person is alleged to have acted in bad faith when acting, or purportedly acting, in an official capacity, a civil or criminal proceeding for the act may only be brought by leave of the Supreme Court.
- (5) The Supreme Court is not to grant leave unless satisfied there are substantial reasons for believing the person acted in bad faith.

57 Officials not to be called to give evidence

- (1) A person who acts, or has acted, in an official capacity must not be called to give evidence in proceedings to which this section applies about any matter coming to the person's knowledge when acting, or purportedly acting, in an official capacity.
- (2) This section applies to any civil, criminal or disciplinary proceedings except:
 - (a) proceedings in which the Commissioner, a member of the Commissioner's staff, or another person is alleged to have acted improperly in an official capacity; or
 - (b) proceedings for an offence against this Act.

58 Regulations

The Administrator may make regulations under this Act.

ENDNOTES**1 KEY**

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = *Gazette*
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION***Public Interest Disclosure Act 2008 (Act No. 38, 2008)***

Assent date 8 December 2008
Commenced 31 July 2009 (*Gaz* G25, 24 June 2009, p 2)

Ombudsman Act 2009 (Act No. 5, 2009)

Assent date 12 March 2009
Commenced 1 July 2009 (*Gaz* G21, 27 May 2009, p 5)

3 LIST OF AMENDMENTS

s 22 amd No. 5, 2009, s 179
pt 7 hdg exp No. 38, 2008, s 61
ss 59 – 61 exp No. 38, 2008, s 61