

**Authorised Version No. 022**  
**Whistleblowers Protection Act 2001**  
**No. 36 of 2001**

Authorised Version incorporating amendments as at  
23 October 2011

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**Authorised Version No. 022**  
**Whistleblowers Protection Act 2001**

**No. 36 of 2001**

Authorised Version incorporating amendments as at  
23 October 2011

**The Parliament of Victoria enacts as follows:**

**PART 1—PRELIMINARY**

**1 Purposes**

The purposes of this Act are—

- (a) to encourage and facilitate disclosures of improper conduct by public officers and public bodies; and
- (b) to provide protection for—
  - (i) persons who make those disclosures; and
  - (ii) persons who may suffer reprisals in relation to those disclosures; and
- (c) to provide for the matters disclosed to be properly investigated and dealt with.

**2 Commencement**

- (1) Sections 1, 114, 119 and this section come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on 1 January 2002.

### 3 Definitions

(1) In this Act—

***corrupt conduct*** means—

- (a) conduct of a person (whether or not a public officer) that adversely affects, or could adversely affect, either directly or indirectly, the honest performance of a public officer's or public body's functions; or
- (b) conduct of a public officer that amounts to the performance of any of his or her functions as a public officer dishonestly or with inappropriate partiality; or
- (c) conduct of a public officer, a former public officer or a public body that amounts to a breach of public trust; or
- (d) conduct of a public officer, a former public officer or a public body that amounts to the misuse of information or material acquired in the course of the performance of their functions as such (whether for the benefit of that person or body or otherwise); or
- (e) a conspiracy or attempt to engage in conduct referred to in paragraphs (a) to (d);

***councillor*** means a councillor of a municipal council;

S. 3(1) def. of  
*Deputy  
Ombudsman*  
repealed by  
No. 32/2004  
s. 21(1)(a).

\* \* \* \* \*

*detrimental action* includes—

- (a) action causing injury, loss or damage; and
- (b) intimidation or harassment; and
- (c) discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action;

*Director* means the Director, Police Integrity under section 7 of the **Police Integrity Act 2008**;

S. 3(1) def. of *Director* inserted by No. 63/2004 s. 30(1)(a)(i), amended by No. 34/2008 s. 143(Sch. 2 item 14.1).

*disclosed matter* means a matter disclosed in a disclosure determined by the Ombudsman under Part 4 or Part 8 to be a public interest disclosure;

*improper conduct* means—

- (a) corrupt conduct; or
- (b) a substantial mismanagement of public resources; or
- (c) conduct involving substantial risk to public health or safety; or
- (d) conduct involving substantial risk to the environment—

that would, if proved, constitute—

- (e) a criminal offence; or

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s. 3

- (f) reasonable grounds for dismissing or dispensing with, or otherwise terminating, the services of a public officer who was, or is, engaged in that conduct;

S. 3(1) def. of *legal practitioner* inserted by No. 18/2005 s. 18(Sch. 1 item 117).

***legal practitioner*** means an Australian legal practitioner within the meaning of the **Legal Profession Act 2004**;

S. 3(1) def. of *member of staff of the Office of Police Integrity* inserted by No. 63/2004 s. 30(1)(a)(i), substituted by No. 34/2008 s. 143(Sch. 2 item 14.2).

***member of staff of the Office of Police Integrity*** has the same meaning as it has in the **Police Integrity Act 2008**;

S. 3(1) def. of *police gaol* inserted by No. 79/2004 s. 104.

***Ombudsman*** means the person appointed as the Ombudsman under section 3 of the **Ombudsman Act 1973**;

***police gaol*** has the same meaning as in the **Corrections Act 1986**;

S. 3(1) def. of *Police Ombudsman* inserted by No. 32/2004 s. 21(1)(b), repealed by No. 63/2004 s. 30(1)(a)(ii).

***Police Minister*** means the Minister for the time being administering Part IVA of the **Police Regulation Act 1958**;

\* \* \* \* \*

*prison* has the same meaning as in the **Corrections Act 1986** but includes a youth justice centre established under section 478 of the **Children, Youth and Families Act 2005**;

S. 3(1) def. of *prison* inserted by No. 79/2004 s. 104, substituted by No. 48/2006 s. 42(Sch. item 38).

*protected disclosure* has the meaning given to it by section 12;

*public body* means—

- (a) a public service body within the meaning of the **Public Administration Act 2004**;
- (b) the chief executive officer of a municipal council, but only in relation to an officer or employee of that council;
- (c) the Chief Commissioner of Police, but only in relation to a person employed in that office who is not a member of the police force;
- (d) a body, whether corporate or unincorporate, that is established by or under an Act for a public purpose;
- (e) a body whose members, or a majority of whose members, are appointed by the Governor in Council or a Minister;
- (f) a company all the shares or a majority of the shares in which are held by the State or another public body;
- (g) a body, whether corporate or unincorporate—
  - (i) supported directly or indirectly by government funds or other assistance; or

S. 3(1) def. of *public body* amended by Nos 108/2004 s. 117(1) (Sch. 3 item 234.1), 24/2006 s. 6.1.2(Sch. 7 item 47(a)).

- (ii) over which the State is in a position to exercise control—  
that is prescribed for the purposes of this Act;
- (h) a university;
- (i) a TAFE institute within the meaning of the **Education and Training Reform Act 2006**;
- (j) a public hospital within the meaning of the **Health Services Act 1988**;
- (k) a State funded residential care service within the meaning of the **Health Services Act 1988**;
- (l) a contractor, or a sub-contractor, within the meaning of Part 3A of the **Health Services Act 1988**, but only in its capacity as a provider of health services to public hospital patients in accordance with an agreement under section 69B(1) of that Act;
- (m) a contractor within the meaning of the **Corrections Act 1986** or a sub-contractor of that contractor, but only in relation to a function or duty or the exercise of a power conferred on it by or under that Act—

but does not include a body specified in section 4(1);

S. 3(1) def. of *public officer* amended by No. 24/2006 s. 6.1.2(Sch. 7 item 47(b)).

*public officer* means—

- (a) a member of Parliament;
- (b) a councillor;
- (c) a member, officer or employee of a public body other than a university;

- 
- (d) a member of the governing body of a public body other than a university;
  - (e) an officer or employee of a municipal council;
  - (f) an officer or employee or a member of the academic staff of a university, or a member of the governing authority of a university;
  - (g) a member of the police force;
  - (h) a protective services officer appointed under Part VIA of the **Police Regulation Act 1958**;
  - (i) a person who is employed in the office of the Chief Commissioner of Police and who is not a member of the police force;
  - (j) the holder of an office established by or under an Act to which the right to appoint is vested in the Governor in Council or a Minister;
  - (k) a member of the teaching service within the meaning of the **Education and Training Reform Act 2006**—

but does not include a person specified in section 4(2);

*relevant Minister* means—

- (a) in relation to a public body, the Minister responsible for that public body; or
- (b) in relation to a public officer, means the Minister responsible for that public officer;

S. 3(1) def. of *Special Investigations Monitor* inserted by No. 79/2004 s. 104.

***Special Investigations Monitor*** means the Special Investigations Monitor appointed under section 5 of the **Major Crime (Special Investigations Monitor) Act 2004**;

S. 3(1) def. of *university* amended by No. 24/2006 s. 6.1.2(Sch. 7 item 47(c)).

***university*** means a university within the meaning of the **Education and Training Reform Act 2006** that is a body politic and is governed by a council, some of the members of which are appointed by the Governor in Council or a Minister.

- (2) For the purposes of this Act, the chief executive officer of a municipal council is to be taken to be the chief executive officer of a public body in relation to an officer or employee of that council.
- (3) For the purposes of this Act, the Chief Commissioner of Police is to be taken to be the chief executive officer of a public body in relation to a person who is employed in the office of the Chief Commissioner of Police and who is not a member of the police force.
- (4) For the purposes of this Act, a reference to a member of the police force includes a reference to a protective services officer.

#### **4 Exclusion of certain persons and bodies**

- (1) The following bodies are not public bodies for the purposes of this Act—
  - (a) a court;
  - (b) a board, tribunal, commission or other body presided over by a judge, magistrate or legal practitioner presiding as such by virtue of a statutory requirement and appointment.

(2) The following persons are not public officers for the purposes of this Act—

- (a) a judge of the Supreme Court;
- (b) a judge of the County Court;
- (c) a master of the Supreme Court;
- (d) a master of the County Court;
- (e) a magistrate;
- (f) a member of the Victorian Civil and Administrative Tribunal;
- (g) the Director of Public Prosecutions;
- (h) the Auditor-General;
- (i) the Ombudsman;
- (ia) the Director;

S. 4(2)(ia)  
inserted by  
No. 32/2004  
s. 21(2),  
substituted by  
No. 63/2004  
s. 30(1)(b).

(ib) the Special Investigations Monitor;

S. 4(2)(ib)  
inserted by  
No. 62/2004  
s. 17.

(ic) the Chief Examiner or an Examiner under the **Major Crime (Investigative Powers) Act 2004**;

S. 4(2)(ic)  
inserted by  
No. 79/2004  
s. 105.

(j) the Electoral Commissioner;

(k) a Parliamentary officer within the meaning of the **Parliamentary Administration Act 2005**;

S. 4(2)(k)  
substituted by  
No. 20/2005  
s. 52(6).

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S. 4(2)(l)  
substituted by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 234.2).

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(l) a judicial employee within the meaning of  
section 101 of the **Public Administration  
Act 2004**.

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**PART 2—DISCLOSURES OF IMPROPER CONDUCT**

**5 Who can make a disclosure about improper conduct?**

A natural person who believes on reasonable grounds that a public officer or public body—

- (a) has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer or public body; or
- (b) has taken, is taking or proposes to take detrimental action in contravention of section 18—

may disclose that improper conduct or detrimental action in accordance with this Part.

**6 To whom can a disclosure be made?**

- (1) Subject to this section, a disclosure under this Part may be made to—
  - (a) the Ombudsman; or
  - (b) if the disclosure relates to a member, officer or employee of a public body, that public body.
- (2) A disclosure that relates to a member of Parliament must be made to—
  - (a) the President of the Legislative Council, if the member is a member of the Legislative Council; or
  - (b) the Speaker of the Legislative Assembly, if the member is a member of the Legislative Assembly.
- (3) A disclosure that relates to a councillor must be made to the Ombudsman.

S. 6(4)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

(4) A disclosure that relates to the Chief Commissioner of Police must be made to the Ombudsman or the Director.

(5) A disclosure that relates to any other member of the police force may be made to—

(a) the Ombudsman; or

(b) the Director; or

S. 6(5)(b)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

(c) the Chief Commissioner of Police.

(6) A disclosure—

(a) may be made orally or in writing; and

(b) must be made in accordance with the prescribed procedure.

(7) A disclosure made in relation to a member of Parliament is not to be taken to be a contempt of Parliament.

#### **7 Can a person make an anonymous disclosure?**

A person may make a disclosure under this Part anonymously.

#### **8 Is it necessary to know who has engaged in the conduct about which the disclosure is made?**

A person may make a disclosure under this Part even if the person cannot identify the person or body to whom or which the disclosure relates.

#### **9 Can a disclosure be about past conduct?**

A person may make a disclosure under this Part about conduct that has occurred before the commencement of this section.

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**10 Privileges of Parliament and legal professional privilege or client legal privilege not affected**

S. 10  
(Heading)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 65.1).

- (1) Nothing in this Act derogates from the privileges, immunities and powers held, possessed or enjoyed by custom, statute or other law or otherwise of—
- (a) the Parliament; and
  - (b) each House of Parliament; and
  - (c) the President of the Legislative Council; and
  - (d) the Speaker of the Legislative Assembly; and
  - (e) the members and Committees of each House of Parliament; and
  - (f) the joint Committees of the Parliament.
- (2) Nothing in this Act entitles a person to disclose information that is the subject of legal professional privilege or client legal privilege.

S. 10(2)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 65.2).

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### **PART 3—PROTECTION OF WHISTLEBLOWERS**

#### **11 Application of Part**

This Part only applies to a protected disclosure.

#### **12 What is a protected disclosure?**

A protected disclosure is a disclosure made in accordance with Part 2.

#### **13 Certain further information also protected**

- (1) Subject to section 23, if a person who makes a disclosure in accordance with Part 2 provides further information relating to that disclosure to a person or body listed in subsection (2), that further information is to be treated as if it were a protected disclosure for the purposes of this Part.
- (2) Subsection (1) applies to further information provided to—
  - (a) the President of the Legislative Council; or
  - (b) the Speaker of the Legislative Assembly; or
  - (c) the Ombudsman; or
  - (d) the Director; or
  
  - (e) the Chief Commissioner of Police; or
  - (f) a public body.

S. 13(2)(d)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

#### **14 Immunity from liability**

A person who makes a protected 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 protected disclosure.

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## **15 Confidentiality provisions do not apply**

Without limiting section 14, a person who makes a protected disclosure does not by doing so—

- (a) commit an offence under section 95 of the **Constitution Act 1975** or a provision of any other Act that imposes a duty to maintain confidentiality with respect to a matter or any other restriction on the disclosure of information; or
- (b) breach an obligation by way of oath or rule of law or practice or under an agreement requiring him or her to maintain confidentiality or otherwise restricting the disclosure of information with respect to a matter.

## **16 Protection from defamation action**

Without limiting section 14, in proceedings for defamation there is a defence of absolute privilege in respect of the making of a protected disclosure.

## **17 Liability for own conduct**

Despite anything to the contrary in this Part, a person's liability for his or her own conduct is not affected by the person's disclosure of that conduct under this Act.

## **18 Protection from reprisal**

- (1) A person must not take detrimental action against a person in reprisal for a protected disclosure.

Penalty: 240 penalty units or 2 years imprisonment or both.

- 
- (2) A person takes detrimental action in reprisal for a protected disclosure if—
- (a) the person takes or threatens to take the action because—
    - (i) a person has made, or intends to make, a protected disclosure; or
    - (ii) the person believes that a person has made or intends to make the protected disclosure; or
  - (b) the person incites or permits another person to take or threaten to take the action for either of those reasons.
- (3) In determining whether a person takes detrimental action in reprisal it is irrelevant whether or not a reason referred to in subsection (2) is the only or dominant reason as long as it is a substantial reason.

### **19 Proceedings for damages for reprisal**

- (1) A person who takes detrimental action against a person in reprisal for a protected disclosure is liable in damages to that person.
- (2) The damages may be recovered in proceedings as for a tort in any court of competent jurisdiction.
- (3) Any remedy that may be granted by a court with respect to a tort, including exemplary damages, may be granted by a court in proceedings under this section.
- (4) The right of a person to bring proceedings for damages does not affect any other right or remedy available to the person arising from the detrimental action.

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## **20 Application for injunction or order**

A person who believes that detrimental action has been taken or may be taken against him or her in reprisal for a protected disclosure may apply to the Supreme Court for—

- (a) an order requiring the person who has taken the detrimental action to remedy that action; or
- (b) an injunction.

## **21 Injunction or order**

(1) If, on receipt of an application under section 20, the Supreme Court is satisfied that a person has taken or intends to take detrimental action against a person in reprisal for a protected disclosure, the Court may—

- (a) order the person who took the detrimental action to remedy that action; or
- (b) grant an injunction in any terms the Court considers appropriate.

(2) The Supreme Court, pending the final determination of an application under section 20, may—

- (a) make an interim order in the terms of subsection (1)(a); or
- (b) grant an interim injunction.

## **22 Offence to reveal confidential information**

(1) A person who obtains or receives information in the course of or as a result of a protected disclosure or the investigation of a disclosed matter under this Act must not disclose that information except for the purposes of—

Whistleblowers Protection Act 2001  
No. 36 of 2001  
Part 3—Protection of Whistleblowers

s. 22

S. 22(1)(a)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

(a) the exercise of the functions under this Act of the President of the Legislative Council, the Speaker of the Legislative Assembly, the Ombudsman, the Director, the Chief Commissioner of Police or a public body; or

(b) any report or recommendation to be made under this Act; or

(c) any report referred to in Part 9; or

S. 22(1)(d)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 2  
item 58.1).

(d) any proceedings in relation to an offence against section 60 or section 106 or this section or section 19 of the **Evidence (Miscellaneous Provisions) Act 1958**; or

(e) any criminal or disciplinary proceedings taken against a member of the police force as a result of an investigation of a disclosed matter by the Chief Commissioner of Police under Part 7.

Penalty: 60 penalty units or 6 months imprisonment or both.

(2) The Ombudsman or a public body must not in a report or recommendation under this Act or a report referred to in Part 9 disclose particulars likely to lead to the identification of a person who made a protected disclosure.

S. 22(3)  
amended by  
No. 57/2008  
s. 3(1).

(3) A public body must not in a report referred to in Part 9 disclose particulars likely to lead to the identification of a person against whom a protected disclosure is made.

S. 22(3A)  
inserted by  
No. 57/2008  
s. 3(2).

(3A) The Ombudsman must not in a report referred to in section 102 disclose particulars likely to lead to the identification of a person against whom a protected disclosure is made.

(4) Nothing in this section affects the operation of section 90.

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**22A Ombudsman may disclose identity of person against whom protected disclosure is made if in public interest**

S. 22A  
inserted by  
No. 57/2008  
s. 4.

- (1) The Ombudsman may disclose in a report referred to in section 103 particulars likely to lead to the identification of a person against whom a protected disclosure is made if the Ombudsman determines that it is in the public interest to do so.
- (2) In determining whether it is in the public interest to disclose the particulars referred to in subsection (1), the matters to be considered by the Ombudsman must include—
  - (a) the nature of the particulars to be disclosed; and
  - (b) the public interest to be served by the disclosure; and
  - (c) the reasons why confidentiality is not appropriate; and
  - (d) whether the public interest could be met in a manner that is unlikely to lead to the identification of the person.
- (3) If the Ombudsman includes in a report referred to in section 103 particulars likely to lead to the identification of a person against whom a protected disclosure is made, the Ombudsman must set out in that report the reasons why the Ombudsman considers that the disclosure is in the public interest.

**23 Certain further disclosures and further information related to disclosures are not protected disclosures**

- (1) If the Ombudsman makes a determination under Part 4 that a disclosure is not a public interest disclosure, this Part does not apply to—

- (a) any further disclosure to the Ombudsman or the public body of the subject-matter of that disclosure; or
- (b) the provision to the Ombudsman or the public body of any further information in relation to the subject-matter of the disclosure.

S. 23(2)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

(2) If—

S. 23(2)(a)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

- (a) the Director, the Chief Commissioner of Police or a public body concludes under Part 4 that a disclosure is not a public interest disclosure; and

S. 23(2)(b)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

- (b) the person who made the disclosure does not, within 28 days of being notified of the conclusion, request the Director, the Chief Commissioner of Police or a public body (as the case requires) to refer the disclosure to the Ombudsman for determination—

then, from the end of that period, this Part does not apply to any further disclosure to the Ombudsman, the Director, the Chief Commissioner of Police or a public body of the subject-matter of that disclosure or the provision to the Ombudsman, the Director, the Chief Commissioner of Police or a public body of any further information in relation to the subject-matter of the disclosure.

- (3) If the Ombudsman makes a determination under Part 8 that a disclosure is not a public interest disclosure, this Part does not apply to—

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- (a) any further disclosure to the Ombudsman, the President of the Legislative Council or the Speaker of the Legislative Assembly of the subject-matter of that disclosure; or
  - (b) the provision to the Ombudsman, the President of the Legislative Council or the Speaker of the Legislative Assembly of any further information in relation to the subject-matter of the disclosure.
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**PART 4—DETERMINATION OF PUBLIC INTEREST  
DISCLOSURES**

**Division 1—Determination by Ombudsman of public  
interest disclosures**

**24 Determination of disclosure as public interest  
disclosure**

- (1) If a person makes a disclosure to the Ombudsman in accordance with Part 2, the Ombudsman must, within a reasonable time after receiving the disclosure, determine whether the disclosure is a public interest disclosure.
- (2) In making a determination under subsection (1), the Ombudsman must be satisfied that the disclosure shows or tends to show that a public officer or public body—
  - (a) has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer or public body; or
  - (b) has taken, is taking or proposes to take detrimental action in contravention of section 18.

**25 Notice of determination**

- (1) The Ombudsman must, within a reasonable time, notify the person who made the disclosure of the determination under section 24 in respect of the disclosure.
- (2) This section does not apply in respect of a person who made an anonymous disclosure.

**26 Certain complaints under the Police Regulation Act 1958 to be investigated as public interest disclosures**

S. 26  
amended by  
No. 34/2008  
s. 143(Sch. 2  
item 14.3).

If—

- (a) the Ombudsman determines that a disclosure in relation to a member of the police force is a public interest disclosure; and
- (b) the disclosure could constitute a complaint under the **Police Regulation Act 1958**—

then, despite anything to the contrary in Part IVA of the **Police Regulation Act 1958** or Part 3 of the **Police Integrity Act 2008**, the subject-matter of the disclosure must be investigated under this Act instead of under Part IVA of the **Police Regulation Act 1958** or Part 3 of the **Police Integrity Act 2008**.

**27 Notice of alternative procedure**

- (1) If the Ombudsman—
  - (a) determines that a disclosure is not a public interest disclosure; and
  - (b) considers that the disclosure could constitute a complaint under the **Ombudsman Act 1973** or the **Police Regulation Act 1958**—

the Ombudsman must notify the person who made the disclosure of the person's right to have the disclosure dealt with as a complaint under the **Ombudsman Act 1973** or the **Police Regulation Act 1958** (as the case requires).

- (2) A person who is given notice under subsection (1) may by notice in writing to the Ombudsman request that the disclosure be dealt with as a complaint under the **Ombudsman Act 1973** or the **Police Regulation Act 1958** (as the case requires).

S. 27(5)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

- (3) A person must make a request under subsection (2) within 28 days of being given notice under subsection (1).
- (4) If under this section a person requests that a disclosure be dealt with as a complaint under the **Ombudsman Act 1973**, the disclosure is deemed to be a complaint made to the Ombudsman under that Act.
- (5) If under this section a person requests that a disclosure be dealt with as a complaint under the **Police Regulation Act 1958**, the disclosure is deemed to be a complaint made to the Director under that Act.

#### **Division 2—Disclosures made to public bodies**

#### **28 Consideration whether a disclosure is a public interest disclosure**

- (1) If a person makes a disclosure to a public body in accordance with Part 2, the public body must, within 45 days after receiving the disclosure, consider and reach a conclusion as to whether the disclosure is a public interest disclosure.
- (2) In reaching a conclusion under subsection (1), the public body must consider whether the disclosure shows or tends to show that the public officer to whom the disclosure relates—
  - (a) has engaged, is engaging or proposes to engage in improper conduct in his or her capacity as a public officer; or
  - (b) has taken, is taking or proposes to take detrimental action in contravention of section 18.

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**29 What happens if the public body concludes that a disclosure is a public interest disclosure?**

- (1) If, under section 28, a public body concludes that a disclosure is a public interest disclosure, the public body must within 14 days—
  - (a) notify the person who made the disclosure of that conclusion; and
  - (b) refer the disclosure to the Ombudsman for a determination as to whether it is a public interest disclosure.
- (2) A public body is not required to notify under this section a person who made an anonymous disclosure.

**30 What happens if the public body concludes that a disclosure is not a public interest disclosure?**

- (1) If, under section 28, a public body concludes that a disclosure is not a public interest disclosure, the public body must, within 14 days—
  - (a) notify the person who made the disclosure of that conclusion; and
  - (b) advise the person that—
    - (i) he or she may request the public body to refer the disclosure to the Ombudsman for a determination as to whether it is a public interest disclosure; and
    - (ii) the person's request must be made within 28 days of the notification.
- (2) This section does not apply in respect of a person who made an anonymous disclosure.

### **31 Request for referral to Ombudsman**

If a person who is given notice under section 30 requests within the required time that a disclosure be referred to the Ombudsman, the public body must immediately refer the disclosure to the Ombudsman for a determination as to whether it is a public interest disclosure.

### **32 Determination by Ombudsman**

- (1) Division 1 applies to a disclosure referred to the Ombudsman under this Division as if the disclosure had been made to the Ombudsman.
- (2) The Ombudsman must, within a reasonable time, notify the public body that referred the disclosure under this Division of the determination as to whether a disclosure is a public interest disclosure.

## **Division 3—Disclosures in relation to members of the police force**

### **33 Consideration whether a disclosure is a public interest disclosure**

- (1) If a person makes a disclosure that relates to a member of the police force to the Director in accordance with Part 2, the Director must, within 45 days after receiving the disclosure, consider and reach a conclusion as to whether the disclosure is a public interest disclosure.
- (2) If a person makes a disclosure that relates to a member of the police force to the Chief Commissioner of Police in accordance with Part 2, the Chief Commissioner of Police must, within 45 days after receiving the disclosure, consider and reach a conclusion as to whether the disclosure is a public interest disclosure.

S. 33(1)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

(3) In reaching a conclusion under this section, the Director or the Chief Commissioner of Police (as the case requires) must consider whether the disclosure shows or tends to show that the member of the police force to whom the disclosure relates—

S. 33(3)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

- (a) has engaged, is engaging or proposes to engage in improper conduct in his or her capacity as a member of the police force; or
- (b) has taken, is taking or proposes to take detrimental action in contravention of section 18.

**34 What happens if it is concluded that a disclosure is a public interest disclosure?**

(1) If, under section 33, the Director or Chief Commissioner of Police concludes that a disclosure is a public interest disclosure, he or she must within 14 days—

S. 34(1)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

- (a) notify the person who made the disclosure of that conclusion; and
- (b) refer the disclosure to the Ombudsman for a determination as to whether it is a public interest disclosure.

(2) The Director or Chief Commissioner of Police is not required to notify under this section a person who made an anonymous disclosure.

S. 34(2)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

**35 What happens if it is concluded that a disclosure is not a public interest disclosure?**

(1) If, under section 33, the Director or Chief Commissioner of Police concludes that a disclosure is not a public interest disclosure, he or she must, within 14 days—

S. 35(1)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

- (a) notify the person who made the disclosure of that conclusion; and
- (b) advise the person that—
  - (i) he or she may request that the disclosure be referred to the Ombudsman for a determination as to whether it is a public interest disclosure; and
  - (ii) the person's request must be made within 28 days of the notification.

- (2) This section does not apply in respect of a person who made an anonymous disclosure.

S. 36  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

### **36 Request for referral to Ombudsman**

If a person who is given notice under section 35 requests within the required time that a disclosure be referred to the Ombudsman, the Director or Chief Commissioner of Police (as the case requires) must immediately refer the disclosure to the Ombudsman for a determination as to whether it is a public interest disclosure.

### **37 Determination by Ombudsman**

- (1) Division 1 applies to a disclosure referred to the Ombudsman under this Division as if the disclosure had been made to the Ombudsman.
- (2) The Ombudsman must, within a reasonable time, notify the Director or Chief Commissioner of Police (as the case requires) of the determination as to whether a disclosure is a public interest disclosure.

S. 37(2)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

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**PART 5—INVESTIGATION OF PUBLIC INTEREST  
DISCLOSURES BY THE OMBUDSMAN**

**Division 1—Functions of Ombudsman**

**38 What are the Ombudsman's functions under the Act?**

The Ombudsman's functions under this Act are—

- (a) to determine whether disclosures are public interest disclosures;
- (b) to investigate matters disclosed in public interest disclosures;
- (c) to prepare and publish guidelines for the procedures to be followed by public bodies in relation to—
  - (i) disclosures under Part 2; and
  - (ii) investigations under Part 6; and
- (d) to monitor investigations by public bodies under Part 6; and
- (e) to monitor investigations by the Chief Commissioner of Police under Part 7; and
- (f) to review the procedures and the implementation of procedures of public bodies in relation to—
  - (i) disclosures under Part 2; and
  - (ii) investigations under Part 6;
- (g) any other function conferred on the Ombudsman by or under this Act.

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**Division 2—Requirement to investigate**

**39 Duty to investigate**

Subject to this Division, the Ombudsman must investigate every disclosure the Ombudsman has determined is a public interest disclosure.

**40 Which matters do not have to be investigated?**

- (1) The Ombudsman may decide not to investigate a disclosed matter—
  - (a) if in his or her opinion the disclosure—
    - (i) is trivial; or
    - (ii) is frivolous or vexatious; or
  - (b) if the person making the disclosure had had knowledge for more than 12 months of the disclosed matter and failed to give a satisfactory explanation for the delay in making the disclosure.
- (2) The Ombudsman must—
  - (a) within a reasonable time, notify the person making the disclosure of his or her decision under subsection (1) not to investigate the disclosed matter; and
  - (b) give reasons for that decision.

**41 Referral of matters for investigation otherwise than under this Act**

- (1) The Ombudsman may refer a disclosed matter to the Chief Commissioner of Police, the Auditor-General, a prescribed public body or the holder of a prescribed office to investigate if the Ombudsman considers it appropriate to do so.
- (2) This section does not apply to a disclosed matter relating to a member of the police force.

**42 Referral of public interest disclosures to relevant public body for investigation**

- (1) Subject to subsection (2), the Ombudsman may refer a disclosed matter to a public body to investigate if—
  - (a) the matter relates to a member, officer or employee of the public body; and
  - (b) the Ombudsman considers it appropriate to do so.
- (2) Part 6 applies to the investigation of a matter referred to a public body under this section.
- (3) Nothing in this section limits the operation of section 41.

**43 Referral of certain public interest disclosures to Director for investigation**

S. 43  
(Heading)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

- (1) The Ombudsman may, if the Ombudsman considers it appropriate to do so, refer a disclosed matter to the Director to investigate if the matter relates to—
  - (a) the Chief Commissioner of Police; or
  - (b) any other member of the police force.
- (2) The Director must investigate a disclosed matter referred by the Ombudsman under this section.
- (3) Division 3 (except section 48 or 59) applies to an investigation referred to the Director under this section as if, in that Division, a reference to the Ombudsman were a reference to the Director.

S. 43(1)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

S. 43(2)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c).

S. 43(3)  
amended by  
Nos 32/2004  
s. 22, 63/2004  
s. 30(1)(c),  
79/2004 s. 106.

S. 43(4)  
inserted by  
No. 32/2004  
s. 23,  
amended by  
No. 63/2004  
s. 30(1)(c).

- (4) Division 3A also applies to an investigation referred to the Director under this section.

#### **44 Referral of certain public interest disclosures to Chief Commissioner of Police for investigation**

- (1) The Ombudsman may refer a disclosed matter to the Chief Commissioner of Police to investigate if—
- (a) the matter relates to a member of the police force other than the Chief Commissioner of Police or a Deputy or Assistant Commissioner of Police; and
  - (b) the Ombudsman considers it appropriate to do so.
- (2) Part 7 applies to the investigation of a matter referred to the Chief Commissioner of Police under this section.

#### **45 What information may the Ombudsman provide?**

The Ombudsman may give to a person or body to whom or which a matter is referred under this Division for investigation any information that the Ombudsman has in respect of the matter.

#### **46 Notice of referral**

If the Ombudsman refers a disclosed matter to a person or body under this Division to investigate, the Ombudsman must give notice of that referral to the person who made the disclosure unless it was an anonymous disclosure.

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**Division 3—Investigation by Ombudsman**

**47 Procedures for investigation**

Subject to this Part, the Ombudsman may regulate his or her procedures on an investigation of a disclosed matter in any manner that he or she thinks fit.

**48 Secondment of members of the police force for certain investigations**

- (1) The Ombudsman may request the Chief Commissioner of Police to make available members of the police force to assist the Ombudsman in the investigation of a disclosed matter.
- (2) On a request under subsection (1), the Chief Commissioner of Police, must make available such members of the police force as the Chief Commissioner of Police thinks necessary to assist the Ombudsman in the investigation of a disclosed matter.
- (3) Every member of the police force made available to the Ombudsman under this section remains under the direction and control of the Chief Commissioner of Police but must in assisting the Ombudsman have regard to the wishes of the Ombudsman concerning the conduct of an investigation.

**49 Secondment of others for certain investigations**

- (1) The Ombudsman may request a prescribed public body to make available staff to assist the Ombudsman in the investigation of a disclosed matter.
- (2) On a request under subsection (1), the prescribed public body must make available such staff as the prescribed public body thinks necessary to assist

the Ombudsman in the investigation of a disclosed matter.

- (3) Every person made available to the Ombudsman under this section remains under the direction and control of the prescribed public body but must in assisting the Ombudsman have regard to the wishes of the Ombudsman concerning the conduct of an investigation.

#### **50 Notice of the investigation**

- (1) Before conducting an investigation of a disclosed matter, the Ombudsman must in writing inform the relevant person or body listed in subsection (2) of his or her intention to do so.
- (2) For the purposes of subsection (1) information must be given to—
  - (a) if the disclosed matter relates to a public body or a public officer, either the relevant Minister or the chief executive officer of the public body; or
  - (b) if the disclosed matter relates to a mayor of a municipal council, either the relevant Minister or the chief executive officer of the relevant municipal council; or
  - (c) if the disclosed matter relates to a councillor (other than the mayor) of a municipal council, the mayor and the chief executive officer of the relevant municipal council; or
  - (d) if the disclosed matter relates to the chief executive officer of a municipal council—
    - (i) the relevant Minister; or
    - (ii) the mayor of that council and a senior officer (within the meaning of the **Local Government Act 1989**) of that council nominated by that council; or

(e) if the disclosed matter relates to any other officer or employee of a municipal council, the mayor and the chief executive officer of the relevant municipal council.

S. 50(2)(e)  
amended by  
No. 79/2004  
s. 107(1)(a).

\* \* \* \* \*

S. 50(2)(f)(g)  
repealed by  
No. 79/2004  
s. 107(1)(b).

(3) This section does not apply to an investigation of a disclosed matter that relates to a member of the police force.

S. 50(3)  
inserted by  
No. 79/2004  
s. 107(2).

**50A Notice of the investigation—police matters**

S. 50A  
inserted by  
No. 79/2004  
s. 108.

- (1) This section applies to an investigation of a disclosed matter that relates to a member of the police force.
- (2) The Ombudsman may inform the relevant person in writing of the investigation.
- (3) The relevant person is—
  - (a) if the disclosed matter relates to the Chief Commissioner of Police, the Police Minister; or
  - (b) if the disclosed matter relates to any other member of the police force, the Chief Commissioner of Police.

**51 Investigation to be private**

The investigation by the Ombudsman of a disclosed matter is to be conducted in private.

**52 A hearing is not required**

The Ombudsman is not required to hold a hearing for the purposes of an investigation of a disclosed matter.

### 53 Legal representation

The Ombudsman may determine whether or not any person may be represented by a legal practitioner or otherwise at a hearing in an investigation by the Ombudsman of a disclosed matter.

### 54 How is evidence to be taken?

- (1) Subject to this Part, the Ombudsman may obtain information from any person and in any manner he or she thinks fit for the purposes of an investigation of a disclosed matter.
- (2) The provisions of sections 17, 18, 19, 20 and 20A of the **Evidence (Miscellaneous Provisions) Act 1958** apply to and in relation to any investigation of a disclosed matter by the Ombudsman as if the Ombudsman were the sole Commissioner issued with a commission by the Governor in Council.
- (3) For the purpose of an investigation of a disclosed matter, the Ombudsman may take a statutory declaration from any witness or other person.

### 55 Power to require answers etc. of members of the police force in certain investigations

- (1) Without limiting section 54, in an investigation of a disclosed matter relating to a member of the police force, the Ombudsman may direct a member of the force to give any relevant information, produce any relevant document or answer any relevant question.
- (2) A member of the police force who does not comply with a direction under subsection (1) commits a breach of discipline under section 69 of the **Police Regulation Act 1958**.

S. 54(2)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 2  
item 58.1).

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- (3) Except in proceedings for perjury, for a breach of discipline under section 69 of the **Police Regulation Act 1958** or for failure to comply with a direction, any information or answer that is given, or document that is produced, pursuant to a direction under subsection (1) is not admissible in evidence before any court or person acting judicially.

**56 Can privileged or confidential information be disclosed to the Ombudsman?**

- (1) An obligation to maintain confidentiality or any other restriction on the disclosure of information obtained by or furnished to persons in the service of the Crown or any public body that is imposed by any Act or oath or rule of law or practice or under an agreement does not apply to the disclosure of information for the purposes of an investigation by the Ombudsman of a disclosed matter.
- (2) The Crown is not, in relation to an investigation by the Ombudsman of a disclosed matter, entitled to any privilege in respect of the production of documents or the giving of evidence that is allowed by law in legal proceedings.
- (3) Subject to subsections (1) and (2) and section 55, a person cannot be compelled for the purposes of an investigation by the Ombudsman of a disclosed matter to produce any document or give any evidence that the person could not be compelled to produce or give in proceedings before a court.

**57 Deliberations of Ministers and Parliamentary committees not to be disclosed**

- (1) A person is not required or authorised by this Part to furnish any information or answer any question that relates to—
- (a) any deliberation or decision of the Cabinet;  
or
  - (b) the deliberations of any committee consisting of members of Parliament if the committee is formed for the purpose of advising Ministers in respect of their deliberations; or
  - (c) any deliberations in private of—
    - (i) a Joint Investigatory Committee or the House Committee, within the meaning of the **Parliamentary Committees Act 2003**; or
    - (ia) a committee of the Legislative Council or Legislative Assembly on a private Bill.
    - (ii) a committee consisting of members of Parliament established by resolution of either the Legislative Council or the Legislative Assembly, or the resolution of both the Legislative Council and the Legislative Assembly.
- (2) A person is not required or authorised by this Part to provide or inspect a document that is an exempt document under section 28 of the **Freedom of Information Act 1982**.

S. 57(1)(c)(i)  
substituted by  
No. 110/2003  
s. 64,  
amended by  
No. 20/2005  
s. 45.

S. 57(1)(c)(ia)  
inserted by  
No. 110/2003  
s. 64.

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- (3) A certificate issued by the Secretary to the Department of Premier and Cabinet certifying that any information or question relates to a deliberation or decision of the Cabinet or a deliberation of a committee referred to subsection (1) is conclusive of the fact so certified.
- (4) In this section *Cabinet* includes a committee or sub-committee of Cabinet.

### **58 Power to enter premises**

For the purpose of conducting an investigation of a disclosed matter, the Ombudsman or any officer of the Ombudsman authorised by him or her for that purpose may at any reasonable time—

- (a) enter any premises occupied or used by a public officer or public body in their capacity as such; and
- (b) inspect those premises or anything for the time being in them or on them.

### **59 Consultation and comment**

If, in the course of an investigation of a disclosed matter, it appears to the Ombudsman that there may be grounds for making a report adverse to a public body, a public officer, a councillor or a member of the police force, the Ombudsman must, before making the report, give an opportunity to comment on the matter to—

- (a) in the case of a public body or public officer, the relevant Minister or the chief executive officer; or

s. 60

- (b) in the case of a councillor, the relevant Minister or the mayor of the relevant municipal council; or
- (c) in the case of the Chief Commissioner of Police, the Police Minister; or
- (d) in the case of any other member of the police force, the Chief Commissioner of Police.

## 60 Obstruction

(1) A person must not—

S. 60(1)(a)  
amended by  
No. 79/2004  
s. 109(a).

- (a) without lawful excuse, wilfully obstruct, hinder or resist the Ombudsman or any other person in the exercise of his or her powers under this Part; or

S. 60(1)(b)  
amended by  
No. 79/2004  
s. 109(a).

- (b) without lawful excuse, refuse to or wilfully fail to comply with any lawful requirement of the Ombudsman or any other person under this Part; or

S. 60(1)(c)  
amended by  
No. 79/2004  
s. 109(a).

- (c) make a statement the person knows to be false or misleading in a material respect to the Ombudsman or any other person in the course of an investigation under this Part; or

S. 60(1)(d)  
amended by  
No. 79/2004  
s. 109(a).

- (d) knowingly mislead or attempt to mislead the Ombudsman or any other person in the course of an investigation under this Part.

Penalty: 240 penalty units or 2 years imprisonment or both.

S. 60(2)  
repealed by  
No. 79/2004  
s. 109(b).

\* \* \* \* \*

## 61 Opportunity to be heard before adverse report

S. 61  
amended by  
No. 79/2004  
s. 110 (ILA  
s. 39B(1)).

(1) The Ombudsman must not, in any report under this Part, Part 8 or section 103, make any comment adverse to any person unless that person has been given an opportunity of being heard in the matter and their defence is fairly set out in the report.

S. 61(1)  
amended by  
No. 57/2008  
s. 5(1).

(1A) For the purposes of subsection (1), the Ombudsman must provide the person who is subject to the adverse comment with—

S. 61(1A)  
inserted by  
No. 57/2008  
s. 5(2).

(a) details of the adverse comment; and

(b) either—

(i) a copy of the parts of the report that relate to the adverse comment; or

(ii) information about the adverse comment—

that would adequately enable the person to put forward any defence that the person may want to be set out in the report.

(2) Despite subsection (1), the Ombudsman is not required in relation to a report arising out of an investigation by the Director to—

S. 61(2)  
inserted by  
No. 79/2004  
s. 110.

(a) give a person an opportunity to be heard before making a comment adverse to the person in the report; or

(b) set out the person's defence in the report.

(3) Nothing in subsection (2) prevents the Ombudsman from giving the person an opportunity to be heard, or setting out the person's defence in the report, if the Ombudsman so chooses.

S. 61(3)  
inserted by  
No. 79/2004  
s. 110.

s. 61AA

Pt 5 Div. 3A  
(Heading and  
ss 61A–61F)  
inserted by  
No. 32/2004  
s. 24.

Pt 5 Div. 3A  
(Heading)  
amended by  
No. 63/2004  
s. 30(1)(d).

**Division 3A—Further provisions for investigations by  
Director**

S. 61AA  
inserted by  
No. 79/2004  
s. 111 (as  
amended by  
No. 97/2004  
s. 9(8)).

**61AA Definitions**

(1) In this Division—

S. 61AA(1)  
def. of  
*authorised  
officer*  
amended by  
No. 34/2008  
s. 143(Sch. 2  
item 14.4).

*authorised officer* means—

- (a) the Director; or
- (b) a member of staff of the Office of Police Integrity who is authorised under subsection (2); or
- (c) a person who has taken an oath or made an affirmation under section 18(2) of the **Police Integrity Act 2008** and who is authorised under subsection (2);

S. 61AA(1)  
def. of  
*chief  
executive*  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 234.3).

*chief executive*, of a public authority, means—

- (a) in relation to the police force—the Chief Commissioner of Police; or
- (b) in relation to a public service body within the meaning of the **Public Administration Act 2004**—the public service body Head of the public service body within the meaning of that Act; or

- (c) in relation to any other body, whether or not incorporated, established by or under an Act for a public purpose—the chief executive officer, by whatever name called, of the body;

*court day* means a day on which the registry of the Magistrates' Court is open for business;

*public authority* means—

- (a) the police force; or
- (b) a public service body within the meaning of the **Public Administration Act 2004**; or
- (c) any other body, whether or not incorporated, established by or under an Act for a public purpose.
- (2) The Director may authorise a member of staff of the Office of Police Integrity or a person who has taken an oath or made an affirmation under section 18(2) of the **Police Integrity Act 2008** to exercise the powers of an authorised officer under this Division.

S. 61AA(1)  
def. of  
*public authority*  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 234.4).

S. 61AA(2)  
amended by  
No. 34/2008  
s. 143(Sch. 2  
item 14.5).

### 61A Application of Division

S. 61A  
inserted by  
No. 32/2004  
s. 24.

- (1) This Division applies to an investigation referred to the Director under section 43.
- (2) This Division applies to the investigation in addition to Division 3, and, except where otherwise indicated, nothing in this Division affects or takes away from anything in Division 3.

S. 61A(1)  
amended by  
No. 63/2004  
s. 30(1)(e).

s. 61B

**61B Evidence in Director investigations**

S. 61B  
(Heading)  
amended by  
No. 63/2004  
s. 30(1)(e).

S. 61B  
inserted by  
No. 32/2004  
s. 24.

S. 61B(1)  
amended by  
Nos 63/2004  
s. 30(1)(e),  
69/2009  
s. 54(Sch. Pt 2  
item 58.2).

Note to  
s. 61B(1)  
amended by  
Nos 79/2004  
s. 112(1),  
69/2009  
s. 54(Sch. Pt 2  
item 58.3).

S. 61B(1A)  
inserted by  
No. 79/2004  
s. 112(2),  
amended by  
No. 69/2009  
s. 54(Sch. Pt 2  
item 58.2).

- (1) Sections 19A and 19B of the **Evidence (Miscellaneous Provisions) Act 1958** apply to and in relation to an investigation as if the Director were the sole commissioner issued with a commission by the Governor in Council.

**Note**

The provisions of sections 17, 18, 19, 20 and 20A of the **Evidence (Miscellaneous Provisions) Act 1958** also apply to the investigation—see section 54(2) and subsection (1A) below.

- (1A) Despite anything to the contrary in section 54(2) of this Act, section 20 of the **Evidence (Miscellaneous Provisions) Act 1958** applies to and in relation to an investigation by the Director as if a reference in that section 20 to a law officer were a reference to the Director of Public Prosecutions.
- (2) Subject to this section, section 55 and section 56(1) and (2), a person cannot be compelled, for the purposes of an investigation, to produce any document or give any evidence that he or she could not be compelled to produce or give in proceedings before a court.

Whistleblowers Protection Act 2001  
No. 36 of 2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 61B

(3) It is not a reasonable excuse for a person to fail to provide information, produce a document or thing or give evidence for the purposes of an investigation, on the ground that the information, document, thing or evidence may tend to incriminate the person, if the Director certifies in writing that, in his or her opinion, the provision of the information, production of the document or thing or giving of the evidence is necessary in the public interest.

S. 61B(3)  
amended by  
No. 63/2004  
s. 30(1)(e).

(4) In determining whether or not to certify under subsection (3), the Director may take into account, amongst other things, whether—

S. 61B(4)  
amended by  
No. 63/2004  
s. 30(1)(e).

(a) the investigation involves the review of established policies, practices or procedures of the force; and

(b) it is unlikely that the information, document, thing or evidence could be obtained by other means.

(4A) For the purposes of subsection (3), the Director may certify in respect of—

S. 61B(4A)  
inserted by  
No. 79/2004  
s. 112(3).

(a) particular information, or any or all information of a particular class, to be provided by a particular person; or

(b) particular evidence, or any or all evidence of a particular class, to be given by a particular person.

**Example**

For example, the Director could certify under subsection (3) in respect of a single question to be asked of a witness, or in respect of all questions on a particular topic to be asked of a witness.

(4B) For the avoidance of doubt, the Director is not required to give reasons for certifying under subsection (3).

S. 61B(4B)  
inserted by  
No. 79/2004  
s. 112(3).

Whistleblowers Protection Act 2001  
No. 36 of 2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 61B

S. 61B(5)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 2  
item 58.2).

(5) Subsection (3) applies despite anything to the contrary in this Act or Division 5 of Part I of the **Evidence (Miscellaneous Provisions) Act 1958**.

S. 61B(6)  
amended by  
No. 63/2004  
s. 30(1)(e).

(6) If the Director certifies under subsection (3), he or she must give a copy of the certificate to the person before requiring the person to provide information, produce a document or thing or give evidence.

S. 61B(7)  
amended by  
No. 63/2004  
s. 30(1)(e).

(7) Any information provided, or document or thing produced, or evidence given to the Director by a person in circumstances where the Director has certified under subsection (3) is not admissible in evidence against that person before any court or person acting judicially, except in proceedings for—

- (a) perjury or giving false information; or
- (b) a breach of discipline under section 69 of the **Police Regulation Act 1958**; or
- (c) failure to comply with a direction under section 55(1) of this Act; or
- (d) an offence against section 19 of the **Evidence (Miscellaneous Provisions) Act 1958**; or

S. 61B(7)(d)  
amended by  
Nos 79/2004  
s. 112(4)(a),  
69/2009  
s. 54(Sch. Pt 2  
item 58.2).

S. 61B(7)(e)  
inserted by  
No. 79/2004  
s. 112(4)(b).

(e) contempt of the Director under section 61H.

**61BA Video-recording of examination**

(1) This section applies if—

- (a) a person attends the Director in the course of an investigation in answer to a summons issued under section 17 of the **Evidence (Miscellaneous Provisions) Act 1958**; or
- (b) a person attending the Director voluntarily in the course of an investigation is required—
  - (i) to be sworn or to make an affirmation; or
  - (ii) to answer a question; or
- (c) a person attends the Director in the course of an investigation and the Director issues a certificate under section 61B(3) in relation to the provision of information, production of a document or thing or the giving of evidence by the person.

(2) The Director must ensure that the person's attendance is video-recorded.

(3) Subject to subsection (4), evidence of anything said by the person during the attendance after the relevant time is inadmissible as evidence against any person in any proceedings unless the attendance was video-recorded from the relevant time and the video-recording is available to be tendered in evidence.

(4) A court may admit evidence of anything said by a person during an attendance that is otherwise inadmissible by reason of subsection (3) if the court is satisfied on the balance of probabilities that the circumstances—

S. 61BA  
inserted by  
No. 79/2004  
s. 113 (as  
amended by  
No. 97/2004  
s. 8(4)–(6)).

S. 61BA(1)(a)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 2  
item 58.1).

**s. 61BAB**

- (a) are exceptional; and
  - (b) justify the reception of the evidence.
- (5) In this section—

*relevant time* means—

- (a) in the circumstances set out in subsection (1)(a)—the time the person began giving evidence or producing a document or thing in compliance with the summons;
- (b) in the circumstances set out in subsection (1)(b)—the time the requirement was made;
- (c) in the circumstances set out in subsection (1)(c)—the time the certificate was issued.

S. 61BAB  
inserted by  
No. 79/2004  
s. 113.

**61BAB Underage and impaired witnesses**

S. 61BAB(1)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 2  
item 58.1).

- (1) Despite anything to the contrary in the **Evidence (Miscellaneous Provisions) Act 1958**—
- (a) the Director must not issue a summons under section 17 of that Act directed to a person known to be under the age of 16 years; and
  - (b) a summons issued under that section must include a statement that if the person summoned is under the age of 16 years at the date of issue of the summons, the person need not comply with the summons; and
  - (c) a summons directed to a person under the age of 16 years at the date of issue of the summons has no effect.

- 
- (2) A person who claims to be under the age of 16 years at the date of issue of a summons directed to the person must give notice in writing and proof of age to the Director.
  - (3) If the Director suspects that a person attending the Director in answer to a summons may be under the age of 18 years, the Director must confirm the person's age before any question is asked of the person or the person produces a document or other thing.
  - (4) If, at any time during the attendance of a person in answer to a summons, the Director becomes aware that the person is under the age of 16 years, the Director must immediately release the person from all compliance with the summons.
  - (5) If a person required to attend the Director is a person under the age of 18 years, the Director must direct—
    - (a) that a parent or guardian of the person or an independent person is to be present during the person's attendance, if the person so wishes; and
    - (b) that the person may confer with the parent, guardian or independent person before providing any information, producing any document or thing or giving any evidence.
  - (6) If a person required to attend the Director is a person believed by the Director to have a mental impairment, the Director must direct—
    - (a) that an independent person is to be present during the person's attendance, if the person so wishes; and
    - (b) that the person may confer with the independent person before providing any information, producing any document or thing or giving any evidence.

(7) In this section—

*mental impairment* includes impairment because of mental illness, intellectual disability, dementia or brain injury.

S. 61BB  
inserted by  
No. 79/2004  
s. 113.

**61BB Power to enter public authority premises**

(1) An authorised officer may—

- (a) enter at any time premises occupied by a public authority at which the authorised officer reasonably believes there are documents or other things at the premises that are relevant to an investigation; and
- (b) inspect or copy any document or other thing found at any premises entered under paragraph (a); and
- (c) do anything that it is necessary or convenient to do to enable an inspection to be carried out under this section.

(2) On exercising a power of entry under this section, the authorised officer must—

- (a) identify himself or herself to a person at the premises; and
- (b) announce that he or she is authorised to enter the premises.

(3) An authorised officer must not inspect or copy a document or thing under subsection (1)(b) if—

- (a) a person at the premises claims that the document or thing is the subject of legal professional privilege; or

- (b) no claim is made that the document or thing is the subject of legal professional privilege but—
- (i) it appears to the authorised officer that the document or thing may be the subject of legal professional privilege; and
  - (ii) it does not appear to the authorised officer that the person entitled to the benefit of that privilege has consented to the inspection or production.

**Note**

Section 61BE sets out the procedure to be followed if the authorised officer wants to inspect or copy a document or thing that may be the subject of legal professional privilege.

- (4) An authorised officer does not have authority under this section to enter any part of the premises that is used for residential purposes.

**61BC Power to seize documents or things at public authority premises**

- (1) An authorised officer who exercises a power of entry under section 61BB may seize a document or thing at the premises if the authorised officer reasonably suspects that—
- (a) the document or other thing is relevant to an investigation; and
  - (b) if the document or other thing is not immediately seized—
    - (i) it may be concealed or destroyed; or
    - (ii) its forensic value may be diminished.

**S. 61BC**  
inserted by  
**No. 79/2004**  
s. 113 (as  
amended by  
**No. 97/2004**  
s. 9(9)).

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- (2) An authorised officer must not seize a document or thing under subsection (1) if—
- (a) a person at the premises claims that the document or thing is the subject of legal professional privilege; or
  - (b) no claim is made that the document or thing is the subject of legal professional privilege but—
    - (i) it appears to the authorised officer that the document or thing may be the subject of legal professional privilege; and
    - (ii) it does not appear to the authorised officer that the person entitled to the benefit of that privilege has consented to the seizure.

**Note**

Section 61BE sets out the procedure to be followed if the authorised officer wants to seize a document or thing that may be the subject of legal professional privilege.

- (3) A document or other thing seized under this section cannot be used for the purposes of any investigation until—
- (a) the period for making an application under section 61BG for return of the document or thing has expired; or
  - (b) if an application is made within that period— the application and any appeal in relation to it have been finally determined.

**S. 61BD**  
inserted by  
**No. 79/2004**  
s. 113.

**61BD Copying of, access to or receipt for things seized**

- (1) If an authorised officer seizes—
- (a) a document, disk or tape or other thing that can be readily copied; or

(b) a storage device the information in which can be readily copied—

under section 61BC, the authorised officer, on request by a person at the premises, must give a copy of the thing or information to the person as soon as practicable after the seizure.

(2) The authorised officer may refuse a request under subsection (1) if—

(a) the Director is satisfied that the work involved in copying the thing or information would substantially and unreasonably—

(i) divert the resources of the Office of Police Integrity from its other operations; or

(ii) interfere with the performance of the Director's functions; or

(b) the Director is of the opinion that it is not in the public interest to give a copy of the thing or information to the person.

(3) An authorised officer must not refuse a request under subsection (1), unless the authorised officer has—

(a) given the person who made the request a written notice stating an intention to refuse the request; and

(b) given the person a reasonable opportunity to make a further request for a copy of the thing or information in a form that would remove the ground for refusal; and

(c) as far as is reasonably practicable, provided the person with any information that would assist the making of the further request in such a form.

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- (4) An authorised officer is not required to provide any information under subsection (3)(c) if the Director is of the opinion that it is not in the public interest for the information to be provided.
  - (5) If an authorised officer refuses a request under subsection (1)—
    - (a) the authorised officer must provide a receipt for the thing seized; and
    - (b) the Director, on request by the chief executive of the public authority at whose premises the thing was seized, must permit the chief executive to have access to the thing or information unless the Director is of the opinion that it is not in the public interest for the chief executive to have access.
  - (6) The Director must not refuse a request for access under subsection (5)(b), unless the Director has—
    - (a) given the chief executive a written notice stating an intention to refuse to give access; and
    - (b) given the chief executive a reasonable opportunity to make a further request for access in a form that would remove the ground for refusal; and
    - (c) as far as is reasonably practicable, provided the chief executive with any information that would assist the making of the further request in such a form.
  - (7) The Director is not required to provide any information under subsection (6)(c) if the Director is of the opinion that it is not in the public interest for the information to be provided.
  - (8) For the avoidance of doubt, an authorised officer or the Director is not required to give reasons for refusing a request under this section.

**61BE Procedure for documents that may be subject to legal professional privilege**

S. 61BE  
inserted by  
No. 79/2004  
s. 113.

- (1) This section applies if—
  - (a) any of the circumstances referred to in section 61BB(3) or 61BC(2) apply; and
  - (b) the authorised officer still wants to inspect, copy or seize the document or thing (as the case requires).
- (2) In the circumstances referred to in section 61BB(3)(a) or 61BC(2)(a), the authorised officer must require the person claiming that the document or thing is the subject of legal professional privilege (the *claimant*) to seal the document or thing immediately, or arrange for it to be sealed immediately, and give it, or arrange for it to be given, to the authorised officer.
- (3) The claimant must immediately seal the document or thing, or arrange for it to be sealed, under the authorised officer's supervision and give it, or arrange for it to be given, to the authorised officer.  
Penalty: 120 penalty units or imprisonment for 12 months or both.
- (4) In the circumstances referred to in section 61BB(3)(b) or 61BC(2)(b), the authorised officer may take possession of the document or thing and must seal the document or thing immediately.
- (5) The authorised officer must immediately give the sealed document or thing to a registrar of the Magistrates' Court to be held in safe custody.
- (6) The registrar must keep the sealed document or thing in safe custody until—
  - (a) an application is made to the Magistrates' Court under section 61BF to decide whether or not the document or thing is the subject of legal professional privilege; or

- (b) the end of 3 court days after the day on which the sealed document or thing is given to the registrar, if an application has not been made under section 61BF; or
  - (c) the registrar is told by a person who appears to be entitled to the benefit of legal professional privilege and the authorised officer that agreement has been reached on the disposal of the sealed document or thing.
- (7) The registrar must—
- (a) if an application is made to the Magistrates' Court under section 61BF—dispose of the sealed document or thing in the way ordered by the court; or
  - (b) if an application is not made by the end of 3 court days after the day on which the sealed document or thing is given to the registrar—give the sealed document or thing to a person who appears to be entitled to the benefit of legal professional privilege; or
  - (c) if a person who appears to be entitled to the benefit of legal professional privilege and the authorised officer give the registrar notice that an agreement on the disposal of the sealed document or thing has been reached—dispose of the sealed document or thing in the way agreed.
- (8) The registrar is entitled to open and inspect the sealed document or thing solely for the purpose of performing a function under subsection (6)(c) or (7)(b) or (c).
- (9) A person must not open a sealed document or thing unless authorised to open it under this Act or a court order.

Penalty: 120 penalty units or imprisonment for 12 months or both.

**61BF Application to Magistrates' Court to decide on legal professional privilege**

S. 61BF  
inserted by  
No. 79/2004  
s. 113.

- (1) Within 3 court days after an authorised officer gives a sealed document or thing to a registrar of the Magistrates' Court under section 61BE, the Director must apply to the Magistrates' Court to determine whether or not the document or thing is the subject of legal professional privilege.
- (2) The Magistrates' Court must decide whether or not the sealed document or thing is the subject of legal professional privilege and for that purpose the magistrate and any other person authorised by the Court may open and inspect the sealed document or thing.
- (3) If the Magistrates' Court decides that the sealed document or thing is the subject of legal professional privilege, the Court may order that the document or thing be given to a person entitled to the benefit of the privilege.
- (4) If the Magistrates' Court decides that the sealed document or thing is not the subject of legal professional privilege, the Court may order that the document or thing be released to an authorised officer for the purpose of the exercise of the authorised officer's powers under this Division.

**61BG Application for return of things seized**

S. 61BG  
inserted by  
No. 79/2004  
s. 113.

- (1) Within 7 days after a document or thing is seized by an authorised officer under section 61BC, an interested person may apply to the Magistrates' Court for an order setting aside the seizure and requiring the Director to deliver the document or thing to the interested person.
- (2) On an application under subsection (1), the Magistrates' Court may make an order setting aside the seizure and requiring the Director to deliver the document or thing to the interested

person if the Court is satisfied that the grounds for the seizure did not, or no longer, exist.

- (3) The interested person has the burden of proving that the grounds for the seizure did not, or no longer, exist.
- (4) In this section—  
*interested person* in relation to a document or thing, means—
  - (a) the chief executive of the public authority at whose premises the document or thing was seized; or
  - (b) a person authorised by the chief executive to apply under this section on the chief executive's behalf; or
  - (c) any other person who claims to have a legal or equitable interest in the document or thing.

S. 61BH  
inserted by  
No. 79/2004  
s. 113.

#### **61BH Return of things seized**

- (1) The Director must return a document or thing seized under section 61BC to the chief executive of the public authority at whose premises it was seized—
  - (a) if the thing is required as evidence relating to a prosecution or an appeal from a prosecution; or
  - (b) immediately the Director stops being satisfied that its retention is necessary for the purposes of—
    - (i) an investigation; or
    - (ii) a report on an investigation.
- (2) This section is subject to any order of the Magistrates' Court under section 61BG.

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**61C Powers with search warrant**

**S. 61C**  
inserted by  
No. 32/2004  
s. 24.

- (1) The Director may apply to a magistrate for the issue of a search warrant in relation to particular premises if the Director believes, on reasonable grounds that entry to the premises is necessary for the purpose of an investigation.
- (2) If a magistrate is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for the belief under subsection (1), the magistrate may issue a search warrant authorising any person named in the warrant—
- (a) to enter and search the premises named or described in the warrant and inspect any document or thing at those premises; and
  - (b) to make a copy of any document relevant, or that the person reasonably considers may be relevant, to the investigation; and
  - (c) to take possession of any document or thing that the person considers relevant to the investigation.
- (3) A search warrant issued under this section must state—
- (a) the purpose for which the search is required; and
  - (b) any conditions to which the warrant is subject; and
  - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and

**S. 61C(1)**  
amended by  
No. 63/2004  
s. 30(1)(e).

(d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.

(4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** (other than section 78 of that Act) extend and apply to warrants under this section.

(5) For the avoidance of doubt, this section applies to any premises, whether or not occupied by a public officer or public body.

#### **61D Procedure for executing warrant**

(1) On executing a search warrant, the person executing the warrant—

- (a) must announce that he or she is authorised by the warrant to enter the premises; and
- (b) if the person has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.

(2) A person executing a warrant need not comply with subsection (1) if he or she believes, on reasonable grounds that immediate entry to the premises is required to ensure—

- (a) the safety of any person; or
- (b) that the effective execution of the search warrant is not frustrated.

(3) If the occupier is present at premises where a search warrant is being executed, the person executing the warrant must—

- (a) identify himself or herself to the occupier; and
- (b) give the occupier a copy of the warrant.

S. 61D  
inserted by  
No. 32/2004  
s. 24.

(4) If the occupier is not present at premises where a search warrant is being executed, the person executing the warrant must—

(a) identify himself or herself to a person at the premises; and

(b) give that person a copy of the warrant.

**61E Copies or receipts to be given**

(1) If a person takes possession of—

(a) a document, disk or tape or other thing that can be readily copied; or

(b) a storage device the information in which can be readily copied—

under a warrant the person, on request by the occupier, must give a copy of the thing or information to the occupier as soon as practicable after taking possession of it.

(2) If a person takes possession of a thing under a warrant and has not provided a copy of the thing or information under subsection (1) the person must provide a receipt for that thing as soon as practicable after taking possession of it.

**61F Return of documents and other things**

The Director must take all reasonable steps to return a document or thing seized under a warrant to the person from whom it was seized—

(a) if the thing is required as evidence relating to a prosecution or an appeal from a prosecution; or

(b) immediately the Director stops being satisfied that its retention is necessary for the purposes of—

(i) an investigation; or

(ii) a report on an investigation.

S. 61E  
inserted by  
No. 32/2004  
s. 24.

S. 61F  
inserted by  
No. 32/2004  
s. 24,  
amended by  
No. 63/2004  
s. 30(1)(e),  
substituted by  
No. 79/2004  
s. 114 (as  
amended by  
No. 97/2004  
s. 9(10)).

s. 61G

S. 61G  
inserted by  
No. 79/2004  
s. 115.

**61G Confidentiality of summons**

S. 61G(1)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 2  
item 58.1).

- (1) This section applies if the Director issues a summons to a person under section 17 of the **Evidence (Miscellaneous Provisions) Act 1958** in relation to an investigation.
- (2) The Director may give the person to whom the summons is issued a written notice stating—
  - (a) that the summons is a confidential document; and
  - (b) that it is an offence to disclose to anyone else the existence of the summons or the subject-matter of the investigation to which it relates unless the person has a reasonable excuse.
- (3) If the Director gives a notice under subsection (2), a person must not disclose to anyone else the existence of the summons or the subject-matter of the investigation to which it relates, unless the person has a reasonable excuse.

Penalty: 120 penalty units or imprisonment for 12 months or both.
- (4) It is a reasonable excuse for a person to disclose the existence of the summons or the subject-matter of the investigation to which it relates if—
  - (a) the disclosure is made for the purposes of—
    - (i) seeking legal advice in relation to the summons or an offence against subsection (3); or
    - (ii) obtaining or providing information in order to comply with the summons; or
    - (iii) the administration of this Act; and

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s. 61G

(b) the person informs the person to whom the disclosure is made that it is an offence to disclose to anyone else the existence of the summons or the subject-matter of the investigation to which it relates unless the person has a reasonable excuse.

\* \* \* \* \*

S. 61H inserted by No. 79/2004 s. 115, expired by force of No. 36/2001 s. 61J, new s. 61H inserted by No. 60/2008 s. 13, amended by No. 69/2009 s. 54(Sch. Pt 2 item 58.1), repealed by No. 36/2001 s. 61J.

\* \* \* \* \*

S. 61I inserted by No. 79/2004 s. 115, expired by force of No. 36/2001 s. 61J, new s. 61I inserted by No. 60/2008 s. 13, amended by No. 69/2009 s. 54(Sch. Pt 2 item 58.1), repealed by No. 36/2001 s. 61J.

\* \* \* \* \*

S. 61J inserted by No. 79/2004 s. 115, substituted by No. 60/2008 s. 13, repealed by No. 36/2001 s. 61J.

s. 61K

**61K Arrest of recalcitrant witnesses**

S. 61K  
inserted by  
No. 79/2004  
s. 115.

S. 61K(1)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 2  
item 58.1).

- (1) The Director may apply to a magistrate for the issue of a warrant to arrest a person, if the Director believes on reasonable grounds that the person has been duly served with a summons under section 17 of the **Evidence (Miscellaneous Provisions) Act 1958** and has failed to attend before the Director in answer to the summons.
- (2) A magistrate may issue a warrant to arrest a person if satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for the belief under subsection (1).
- (3) The authority given by, and the rules to be observed with respect to, warrants to arrest under Subdivision 2 of Division 3 of Part 4 of the **Magistrates' Court Act 1989** (other than section 62 or 64(2), (3) or (4)) extend and apply to warrants under this section.
- (4) The person arrested—
  - (a) must be brought before the Director as soon as practicable; and
  - (b) may be detained in police custody until excused from attendance by the Director.
- (5) If the Director is satisfied that there are reasonable grounds to believe that it is necessary to prevent the person from escaping from police custody or to ensure the safety of the person, the Director may direct that the person be detained in a prison or a police gaol for the purpose of ensuring his or her attendance at the investigation.
- (6) If a person detained in police custody under this section, other than a person detained in accordance with a direction under subsection (5),

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is required to be detained overnight, the Chief Commissioner of Police must arrange for the person to be provided with accommodation and meals to a standard comparable to that generally provided to jurors kept together overnight.

- (7) If a person is detained in a prison in accordance with a direction under subsection (5), the Director may give a written direction for the person to be delivered into the custody of a member of the police force for the purpose of bringing the person before the Director.
- (8) If it is not practicable for the person to be brought before the Director as soon as practicable after he or she is arrested—
- (a) the person for the time being in charge of the place where he or she is detained must—
    - (i) advise the person that he or she is entitled to apply to a bail justice for discharge from custody; and
    - (ii) give the person a written statement of his or her right to apply; and
  - (b) if the person elects to apply, the person for the time being in charge of the place where he or she is detained must—
    - (i) cause the person to be brought before a bail justice as soon as practicable; and
    - (ii) cause to be produced before the bail justice the arrest warrant for the person; and
    - (iii) abide by the decision of the bail justice in relation to the person.
- (9) When a person is brought before a bail justice under subsection (8), the bail justice may discharge the person from custody on bail in

**s. 61L**

accordance with the **Bail Act 1977** as if the person had been accused of an offence.

- (10) The issue of a warrant under this section, or the arrest of a person under the warrant, does not relieve the person from any liability for non-compliance with a summons.

S. 61L  
inserted by  
No. 79/2004  
s. 115.

**61L Witness already held in custody**

- (1) This section applies if—

S. 61L(1)(a)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 2  
item 58.1).

- (a) a summons is issued under section 17 of the **Evidence (Miscellaneous Provisions) Act 1958** for the purposes of an investigation; and
- (b) the summons is directed to a person who is held in a prison or police gaol.
- (2) The Director may give a written direction that the person be delivered into the custody of a member of the police force for the purpose of bringing the person before the Director to provide information, produce a document or thing or give evidence as required by the summons.
- (3) A direction under subsection (2)—
- (a) must be in the prescribed form; and
- (b) must include a statement that if the person who is the subject of the direction is under the age of 16 years at the date the direction is given, the direction is of no effect and the person is not required to attend the Director; and
- (c) if the person is aged 16 years or over, has effect as a suspension of a direction in a warrant of commitment to deliver the person to the place of detention specified in the

warrant or to hold the person in that place  
(as the case may be).

- (4) The person is to be detained in police custody until he or she is excused by the Director from attendance in the investigation.
- (5) When the person is excused from attendance by the Director, the member of the police force must deliver the person who is the subject of the direction to the place of detention at which the person was held or detained at the time the direction was given.

**61M Consultation and comment**

If at any time during the course of an investigation, it appears to the Director that there may be grounds for making a report adverse to the police force, the Director may, before making the report, give the Chief Commissioner of Police the opportunity to comment on the subject-matter of the investigation.

S. 61M  
inserted by  
No. 79/2004  
s. 115.

**61N Simultaneous investigation and proceedings**

- (1) The Director may commence or continue to conduct an investigation despite the fact that any proceedings are on foot, or are instituted, in any court or tribunal that relate to or are otherwise connected with the subject-matter of the investigation.
- (2) If the Director is or becomes aware that proceedings referred to in subsection (2) are on foot or have been instituted, the Director must take all reasonable steps to ensure that the conduct of the investigation does not prejudice those proceedings.

S. 61N  
inserted by  
No. 79/2004  
s. 115.

**Division 4—Action on completion of investigation**

**62 Director may report to Ombudsman**

The Director may make a report to the Ombudsman on an investigation of a disclosed matter by the Director.

S. 62  
amended by  
Nos 32/2004  
s. 25, 63/2004  
s. 30(1)(e),  
substituted by  
No. 79/2004  
s. 116.

**63 Report on investigation**

- (1) On the completion of an investigation of a disclosed matter the Ombudsman—
  - (a) must report the findings of the investigation to the relevant person; and
  - (b) may make recommendations as to the action to be taken as a result of the investigation.
- (2) For the purposes of subsection (1), the relevant person is—
  - (a) in the case of a public body or public officer, either the relevant Minister or the chief executive officer of the public body;
  - (b) in the case of a councillor, either the relevant Minister or the mayor of the relevant municipal council.

S. 63(2)(b)  
amended by  
No. 79/2004  
s. 117(1)(a).

S. 63(2)(c)(d)  
repealed by  
No. 79/2004  
s. 117(1)(b).

\* \* \* \* \*

- (3) Recommendations under subsection (1) may include—
  - (a) a recommendation that the disclosed matter be referred to an appropriate authority for further consideration;
  - (b) a recommendation that action be taken to remedy any harm or loss arising from the conduct;

(c) a recommendation that action be taken to prevent the conduct from continuing or occurring in the future.

(4) This section does not apply to an investigation of a disclosed matter that relates to a member of the police force.

S. 63(4) amended by Nos 32/2004 s. 25, 63/2004 s. 30(1)(e), substituted by No. 79/2004 s. 117(2).

**63A Report on investigation—police matters**

S. 63A inserted by No. 79/2004 s. 118.

(1) On the completion of an investigation of a disclosed matter that relates to a member of the police force, the Ombudsman—

(a) may make a written report on the results of the investigation to any one or more of—

(i) the Chief Commissioner;

(ii) the Police Minister;

(iii) the Premier; and

(b) may make recommendations as to the action to be taken as a result of the investigation.

(2) Recommendations under subsection (1) may include—

(a) a recommendation that the disclosed matter be referred to an appropriate authority for further consideration;

(b) a recommendation that action be taken to remedy any harm or loss arising from the conduct;

(c) a recommendation that action be taken to prevent the conduct from continuing or occurring in the future.

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- (3) This section applies to an investigation of a disclosed matter by the Ombudsman or the Director.

S. 64  
amended by  
No. 79/2004  
s. 119 (as  
amended by  
No. 97/2004  
s. 9(11)).

#### **64 Notice of implementation of recommendation**

If the Ombudsman makes a recommendation in a report to a person under section 63 or 63A, he or she may request that person to notify him or her within a specified time—

- (a) of the steps that have been or are proposed to be taken to give effect to the recommendation; or
- (b) if no steps have been or are proposed to be taken, the reasons for this.

S. 65  
substituted by  
No. 79/2004  
s. 120.

#### **65 Chief Commissioner of Police to respond to Ombudsman**

If, under section 63A, the Ombudsman makes a recommendation to the Chief Commissioner of Police as to the taking of any action, the Chief Commissioner of Police must give a written response to the Ombudsman stating whether or not the Chief Commissioner of Police proposes to take the action.

S. 65A  
inserted by  
No. 79/2004  
s. 120.

#### **65A Referral of matters to DPP**

- (1) At any time during or after completing an investigation, the Ombudsman or the Director may refer to the Director of Public Prosecutions any matter that is relevant to the performance of functions or duties by the Director of Public Prosecutions.
- (2) If the Ombudsman or the Director refers a matter to the Director of Public Prosecutions under subsection (1), the Ombudsman may include that fact, and any details of the referral that the Ombudsman considers appropriate, in any report of the investigation under section 63 or 63A.

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## **66 Report to Parliament**

If it appears to the Ombudsman that insufficient steps have been taken within a reasonable time after making a report and recommendations under section 63 in relation to a public body, public officer or councillor, the Ombudsman, after considering any comments of the relevant Minister, the chief executive officer of the public body or the mayor of the relevant council (as the case requires), may, as he or she thinks fit, cause to be laid before each House of Parliament a report on any matter to which the report, recommendations and comments (if any) relate.

## **67 Person who made disclosure to be informed**

- (1) If the Ombudsman investigates a disclosed matter or takes any other action under this Part in respect of a disclosed matter, the Ombudsman must, within a reasonable time after the completion of the investigation, inform the person who made the disclosure of the result of the investigation or other action.
- (2) The information may be provided in the manner that the Ombudsman thinks fit.
- (3) If it appears to the Ombudsman that insufficient steps have been taken within a reasonable time after making a report and recommendations under section 63, the Ombudsman must inform the person who made the disclosure of the recommendations, making any comments on them that he or she thinks appropriate.
- (4) The Ombudsman may disclose to the person who made the disclosure any additional information that the Ombudsman thinks appropriate.
- (5) This section does not apply in respect of a person who made an anonymous disclosure.

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**S. 67(6)**  
inserted by  
**No. 79/2004**  
s. 121.

- (6) This section does not apply to an investigation, report or other action taken under this Part in relation to a disclosed matter that relates to a member of the police force, but nothing in this or any other Act prevents the Ombudsman, if he or she so chooses, from informing the person who made the disclosure of—
- (a) the result of the investigation or other action;  
or
  - (b) any recommendations made by the Ombudsman and any comments on them that the Ombudsman thinks appropriate.

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**PART 6—INVESTIGATION OF PUBLIC INTEREST  
DISCLOSURES BY PUBLIC BODIES**

**Division 1—Establishment of procedures**

**68 Public body to establish procedures**

- (1) A public body must establish procedures—
  - (a) to facilitate the making of disclosures under Part 2; and
  - (b) for investigations of disclosed matters; and
  - (c) for the protection of persons from reprisals by the public body or any member, officer or employee of the public body because of disclosures.
- (2) The procedures must be established—
  - (a) in the case of a public body existing immediately before the commencement of this section, as soon as practicable after that commencement; and
  - (b) in the case of a public body established on or after that commencement, as soon as practicable after that body is established.
- (3) The procedures must comply with this Act and the guidelines for the time being in force under section 69.

**69 Ombudsman's guidelines**

- (1) The Ombudsman must prepare and publish guidelines for procedures—
  - (a) to facilitate the making of disclosures to public bodies under Part 2; and
  - (b) for investigations under this Part of disclosed matters; and

(c) for the protection of persons from reprisals by public bodies or members, officers or employees of public bodies because of disclosures.

(2) The Ombudsman may from time to time amend the guidelines prepared under subsection (1).

#### **70 Availability of procedures**

(1) A public body must make a copy of its procedures under this Division available to each member, officer and employee of the public body.

(2) A public body must keep a copy of its procedures under this Division available at its offices for inspection by the public during normal office hours free of charge.

#### **71 Review of procedures**

(1) The Ombudsman may review the procedures of a public body at any time to ensure that the procedures comply with this Act and the Ombudsman's guidelines.

(2) The Ombudsman may review the implementation of the procedures of a public body to ensure that their implementation complies with this Act and the Ombudsman's guidelines.

(3) The Ombudsman may make any recommendation to a public body that the Ombudsman thinks fit arising from a review under this section.

(4) If it appears to the Ombudsman that insufficient steps have been taken within a reasonable time after making a recommendation under subsection (3), the Ombudsman may, after considering any comments of the public body, send a copy of the recommendation to the relevant Minister.

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**Division 2—Requirement to investigate**

**72 Duty to investigate**

Subject to this Division, a public body must investigate every disclosed matter that the Ombudsman has referred to the body to be investigated under this Part.

**73 Referral to Ombudsman by public body**

A public body must refer the investigation of a disclosed matter to the Ombudsman if the public body considers its own investigation is being obstructed.

**74 Request to Ombudsman by person making disclosure**

If a disclosed matter has been referred to a public body to be investigated under this Part, the person who made the disclosure may request the Ombudsman to investigate the disclosed matter if—

- (a) the public body fails to investigate the matter; or
- (b) the person is dissatisfied with the manner in which the public body is carrying out an investigation of the matter; or
- (c) the person is dissatisfied with the steps taken by the public body after the investigation of the matter; or
- (d) the public body fails to take steps in accordance with section 81.

**75 Ombudsman may take over an investigation**

If the Ombudsman is not satisfied with an investigation of a disclosed matter by a public body under this Part, the Ombudsman may take over the investigation.

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## **76 Provision of information to Ombudsman**

If the Ombudsman commences or takes over an investigation of a disclosed matter that a public body was to investigate or has commenced investigating, the public body must give to the Ombudsman in writing any information that it has and any findings, preliminary or otherwise, that it has made in respect of the matter.

## **77 What can the Ombudsman do?**

- (1) If an investigation by a public body is referred to the Ombudsman under section 73 or taken over by the Ombudsman under section 75, or a request is made under section 74, the Ombudsman may—
  - (a) commence a new investigation; or
  - (b) complete the investigation; or
  - (c) refer the investigation back to the public body to investigate with recommendations about the future conduct of the investigation; or
  - (d) refer the matter to another public body to investigate.
- (2) If a request is made under section 74 or an investigation is taken over by the Ombudsman under section 75, the Ombudsman may also inquire into the conduct of the investigation by the public body.
- (3) Divisions 3 and 4 of Part 5 apply to an investigation commenced, referred to or taken over by the Ombudsman under this Division.

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## **78 Notice of referral**

- (1) If a public body refers an investigation to the Ombudsman under this Part, the public body must give notice of that referral to the person who made the disclosure unless it was an anonymous disclosure.
- (2) If the Ombudsman takes over an investigation of a disclosed matter under this Part, the Ombudsman must give notice of that fact to the person who made the disclosure unless it was an anonymous disclosure.

### **Division 3—Investigation by public body**

## **79 Investigation to be in accordance with procedures**

An investigation under this Part by a public body of a disclosed matter must be in accordance with the procedures established for the public body.

## **80 Information about progress of investigation**

- (1) A public body conducting an investigation of a disclosed matter must, at the request of the Ombudsman or person who made the disclosure, give the Ombudsman or the person (as the case requires) reasonable information about the investigation.
- (2) A public body must give the information within 28 days of receiving the request.
- (3) A public body is not required to give the information to the person who made the disclosure if—
  - (a) the information requested has already been given to that person; or
  - (b) the giving of the information requested would endanger the safety of any person or prejudice the conduct of the investigation.

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**Division 4—Action on investigation**

**81 What action must the public body take?**

- (1) If, on completing an investigation of a disclosed matter, the public body finds that the conduct that was the subject of the investigation has occurred, the public body—
  - (a) must report the findings of the investigation to—
    - (i) in the case of an investigation of a disclosed matter relating to an officer or employee of a municipal council, that council; or
    - (ii) in any other case, the relevant Minister; and
  - (b) must take all reasonable steps to prevent the conduct from continuing or occurring in the future; and
  - (c) may take action to remedy any harm or loss arising from the conduct.
- (2) The steps to be taken may include—
  - (a) the bringing of disciplinary proceedings against the person responsible for the conduct that was the subject of the investigation; and
  - (b) the referral of the matter to an appropriate authority for further consideration.

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## **82 Report on investigation**

- (1) On completing an investigation of a disclosed matter, a public body must notify in writing—
  - (a) the Ombudsman of the findings of the investigation and the steps (if any) taken under section 81; and
  - (b) the relevant person or body of the steps (if any) taken under section 81.
- (2) For the purposes of subsection (1), a relevant person or body is—
  - (a) in the case of an investigation of a disclosed matter relating to an officer or employee of a municipal council, that council;
  - (b) in any other case, the relevant Minister.

## **83 Report to person making disclosure**

- (1) Within a reasonable time after completing an investigation of a disclosed matter, the public body must inform the person who made the disclosure of the findings of the investigation and the steps (if any) taken under section 81.
- (2) This section does not apply in respect of a person who made an anonymous disclosure.

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**PART 7—INVESTIGATION OF PUBLIC INTEREST  
DISCLOSURES REFERRED TO CHIEF COMMISSIONER OF  
POLICE**

**Division 1—Requirement to investigate**

**84 Duty to investigate**

The Chief Commissioner of Police must investigate every disclosed matter relating to a member of the police force that the Ombudsman has referred to the Chief Commissioner of Police to be investigated under this Part.

**85 Request to Ombudsman by person making disclosure**

If a disclosed matter has been referred to the Chief Commissioner of Police to be investigated under this Part, the person who made the disclosure may request the Ombudsman to investigate the disclosed matter if—

- (a) the Chief Commissioner of Police fails to investigate the matter; or
- (b) the person is dissatisfied with the manner in which the Chief Commissioner of Police is carrying out an investigation of the matter; or
- (c) the person is dissatisfied with the steps taken by the Chief Commissioner of Police after the investigation of the matter; or
- (d) the Chief Commissioner of Police fails to take steps in accordance with section 92.

**86 Ombudsman may take over an investigation**

If the Ombudsman is not satisfied with an investigation of a disclosed matter by the Chief Commissioner of Police under this Part, the Ombudsman may take over the investigation.

### **87 Provision of information to Ombudsman**

If the Ombudsman commences or takes over an investigation of a disclosed matter that the Chief Commissioner of Police was to investigate or has commenced investigating, the Chief Commissioner of Police must give to the Ombudsman in writing any information that he or she has and any findings, preliminary or otherwise, that he or she has made in respect of the matter.

### **88 What can the Ombudsman do?**

- (1) If an investigation by the Chief Commissioner of Police is taken over by the Ombudsman under section 86, or a request is made under section 85, the Ombudsman may—
  - (a) commence a new investigation; or
  - (b) complete the investigation; or
  - (c) refer the investigation back to the Chief Commissioner of Police to investigate with recommendations about the future conduct of the investigation; or
  - (d) refer the matter to the Director or another public body to investigate.
  
- (2) If a request is made under section 85 or an investigation is taken over by the Ombudsman under section 86, the Ombudsman may also inquire into the conduct of the investigation by the Chief Commissioner of Police.
  
- (3) Divisions 3 and 4 of Part 5 apply to an investigation commenced, referred to or taken over by the Ombudsman under this Division.

**S. 88(1)(d)**  
amended by  
**No. 79/2004**  
s. 122(1).

S. 88(4)  
inserted by  
No. 79/2004  
s. 122(2).

- (4) In addition to subsection (3), Division 3A of Part 5 applies to an investigation commenced by the Director on a referral from the Ombudsman under this Division.

### **89 Notice of referral**

If the Ombudsman takes over an investigation of a disclosed matter under this Part, the Ombudsman must give notice of that fact to the person who made the disclosure unless it was an anonymous disclosure.

## **Division 2—Investigation by Chief Commissioner of Police**

### **90 Power to require answers etc. of members of the police force in certain investigations**

- (1) In an investigation of a disclosed matter relating to a member of the police force under this Part, the Chief Commissioner of Police may direct a member of the police force to give any relevant information, produce any relevant document or answer any relevant question.
- (2) A member of the police force who does not comply with a direction under subsection (1) commits a breach of discipline under section 69 of the **Police Regulation Act 1958**.
- (3) Except in proceedings for perjury, for a breach of discipline under section 69 of the **Police Regulation Act 1958** or for failure to comply with a direction, any information or answer that is given, or document that is produced, pursuant to a direction under subsection (1) is not admissible in evidence before any court or person acting judicially.

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**91 Progress reports to Ombudsman on investigations**

The Chief Commissioner of Police must as often as requested by the Ombudsman report in writing to the Ombudsman on the progress of an investigation under this Part.

**Division 3—Action on investigation**

**92 What action must the Chief Commissioner of Police take?**

- (1) If, on completing an investigation of a disclosed matter under this Part, the Chief Commissioner of Police finds that the conduct that was the subject of the investigation has occurred, the Chief Commissioner of Police—
  - (a) must take all reasonable steps to prevent the conduct from continuing or occurring in the future; and
  - (b) may take action to remedy any harm or loss arising from the conduct.
- (2) The steps to be taken may include the bringing of disciplinary proceedings against the person responsible for the conduct that was the subject of the investigation.

**93 Report to Ombudsman**

On completing an investigation of a disclosed matter under this Part, the Chief Commissioner of Police must, in writing, notify the Ombudsman of—

- (a) the findings of the investigation; and
- (b) the steps (if any) taken or proposed to be taken under section 92.

s. 94

S. 94  
substituted by  
No. 79/2004  
s. 123.

#### **94 Disagreement between Ombudsman and Chief Commissioner on implementation of recommendations**

- (1) If the Ombudsman disagrees with the Chief Commissioner as to what steps (if any) should be taken, the Ombudsman may make recommendations in writing to the Chief Commissioner of Police as to what steps should be taken.
- (2) If, under subsection (1), the Ombudsman makes a recommendation to the Chief Commissioner of Police as to the taking of any steps, the Chief Commissioner of Police must give a written response to the Ombudsman stating whether or not the Chief Commissioner of Police proposes to take the steps.

S. 94A  
inserted by  
No. 79/2004  
s. 123.

#### **94A Referral of matters to DPP**

The Ombudsman may refer to the Director of Public Prosecutions any matter coming to the Ombudsman's attention under this Division that is relevant to the performance of functions or duties by the Director of Public Prosecutions.

#### **95 Report to person making disclosure**

- (1) Within a reasonable time after completing an investigation of a disclosed matter under this Part, the Chief Commissioner of Police must inform the person who made the disclosure of the findings of the investigation and the steps (if any) taken under section 92.
- (2) This section does not apply in respect of a person who made an anonymous disclosure.

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Commissioner of Police

s. 95

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- (3) Subsection (1) does not apply if the Chief Commissioner of Police is of the opinion that it would be contrary to the public interest to advise the person who made the disclosure of the findings of the investigation or of the steps proposed to be taken.
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**S. 95(3)**  
inserted by  
**No. 79/2004**  
s. 124.

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**PART 8—INVESTIGATION OF DISCLOSURES ABOUT  
MEMBERS OF PARLIAMENT**

**96 Referral of disclosure to Ombudsman**

If a person makes a disclosure to the President of the Legislative Council or the Speaker of the Legislative Assembly in accordance with Part 2, the President or the Speaker may refer the disclosure to the Ombudsman for investigation.

**97 Determination of disclosure as public interest disclosure**

- (1) If the President of the Legislative Council or the Speaker of the Legislative Assembly refers a disclosure to the Ombudsman under this Part, the Ombudsman must, within a reasonable time after receiving the disclosure, determine whether or not the disclosure is a public interest disclosure.
- (2) In making a determination under subsection (1), the Ombudsman must be satisfied that the disclosure shows or tends to show that the member of Parliament to whom the disclosure relates—
  - (a) has engaged, is engaging or proposes to engage in improper conduct in his or her capacity as a member of Parliament; or
  - (b) has taken, is taking or proposes to take detrimental action in contravention of section 18.

**98 Notice of determination**

The Ombudsman must, within a reasonable time, notify the President of the Legislative Council or the Speaker of the Legislative Assembly, as the case requires, of the determination under section 97 in respect of the disclosure.

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**99 Investigation by Ombudsman**

The Ombudsman must investigate every disclosure referred to him or her by the President of the Legislative Council or the Speaker of the Legislative Assembly that the Ombudsman has determined is a public interest disclosure.

**100 Investigations to be conducted in accordance with Division 3 of Part 5**

Division 3 of Part 5, except sections 50 and 59, applies to an investigation commenced by the Ombudsman under this Part.

**101 Report on investigation**

On completion of an investigation of a disclosed matter under this Part, the Ombudsman must report the findings of the investigation to the President of the Legislative Council or the Speaker of the Legislative Assembly (as the case requires).

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**PART 9—ANNUAL REPORTS AND OTHER REPORTS**

**102 Annual report by Ombudsman**

The Ombudsman must include in his or her annual report under section 25 of the **Ombudsman Act 1973**—

- (a) the current guidelines published by the Ombudsman under Part 6;
- (b) the number and types of disclosures made to the Ombudsman during the year;
- (c) the number and types of determinations made by the Ombudsman during the year as to whether disclosures are public interest disclosures;
- (d) the number and types of disclosed matters that during the year the Ombudsman has investigated;
- (e) the number and types of disclosed matters that during the year the Ombudsman has referred—
  - (i) under section 41, to the Chief Commissioner of Police, the Auditor-General, a prescribed public body or the holder of a prescribed office to investigate;
  - (ii) to a public body to investigate under Part 6;
  - (iii) to the Director to investigate;
  - (iv) to the Chief Commissioner of Police to investigate under Part 7;

S. 102(e)(iii)  
amended by  
Nos 32/2004  
s. 25, 63/2004  
s. 30(1)(e).

- 
- (f) the number and types of disclosed matters—
    - (i) that the Ombudsman has declined to investigate during the year;
    - (ii) that were referred by a public body during the year to the Ombudsman to investigate;
  - (g) the number and types of disclosures referred to the Ombudsman under this Act by the President of the Legislative Council or the Speaker of the Legislative Assembly during the year;
  - (h) the number and types of investigations of disclosed matters taken over by the Ombudsman during the year;
  - (i) the number of requests made under section 74 or 85 during the year to the Ombudsman to investigate disclosed matters;
  - (j) the number and types of investigations of disclosed matters for which the Ombudsman has made a recommendation during the year;
  - (k) the recommendations made by the Ombudsman during the year in relation to each type of disclosed matter;
  - (l) the recommendations made by the Ombudsman during the year in relation to the procedures established by a public body under Part 6;
  - (m) the action taken during the year on each recommendation of the Ombudsman under this Act.

### **103 Other reports by Ombudsman**

The Ombudsman may at any time cause a report on any matter arising in relation to a disclosed matter to be laid before each House of Parliament.

S. 103A  
inserted by  
No. 79/2004  
s. 125.

### 103A Transmission of certain reports to Parliament

- (1) This section applies to a report to the Parliament of the Ombudsman under this Act if the report arose from a disclosed matter referred by the Ombudsman to the Director.
- (2) The Director must cause the report to be transmitted to each House of the Parliament as soon as practicable after it is completed.
- (3) The clerk of each House of the Parliament must cause the report to be laid before the House on the day on which it is received or on the next sitting day of the House.
- (4) If the Director proposes to transmit the report to Parliament when Parliament is in recess, the Director must—
  - (a) give one business day's notice of his or her intention to do so to the clerk of each House of the Parliament; and
  - (b) give the report to the clerk of each House on the day indicated in the notice; and
  - (c) publish the report on the Director's Internet website as soon as practicable after giving it to the clerks.
- (5) The clerk of each House must—
  - (a) notify each member of the House of the receipt of a notice under subsection (4)(a) on the same day that the clerk receives that notice; and
  - (b) give a copy of a report to each member of the House as soon as practicable after the report is received under subsection (4)(b); and
  - (c) cause the report to be laid before the House on the next sitting day of the House.

- (6) A report that is given to the clerks under subsection (4)(b) is taken to have been published by order, or under the authority, of the Houses of the Parliament.
- (7) The publication of a report by the Director under subsection (4)(c) is absolutely privileged and the provisions of sections 73 and 74 of the **Constitution Act 1975** and any other enactment or rule of law relating to the publication of the proceedings of the Parliament apply to and in relation to the publication of the report as if it were a report to which those sections applied and had been published by the Government Printer under the authority of the Parliament.
- (8) For the purposes of this section, Parliament is in recess when each House stands adjourned to a date to be fixed by the presiding officer of that House.

#### **104 Annual reports by public body**

If a public body is required by an Act to prepare a report of operations or an annual report on its activities during a year, the report must include—

- (a) the current procedures established by the public body under Part 6;
- (b) the number and types of disclosures made to the public body during the year;
- (c) the number of disclosures referred during the year by the public body to the Ombudsman for determination as to whether they are public interest disclosures;
- (d) the number and types of disclosed matters referred to the public body during the year by the Ombudsman;

- (e) the number and types of disclosed matters referred during the year by the public body to the Ombudsman to investigate;
- (f) the number and types of investigations of disclosed matters taken over by the Ombudsman from the public body during the year;
- (g) the number of requests made under section 74 during the year to the Ombudsman to investigate disclosed matters;
- (h) the number and types of disclosed matters that the public body has declined to investigate during the year;
- (i) the number and types of disclosed matters that were substantiated on investigation and the action taken on completion of the investigation;
- (j) any recommendations of the Ombudsman under this Act that relate to the public body.

**105 Reports by councils in relation to disclosures relating to officers and employees of councils**

A municipal council must, in relation to disclosures relating to officers or employees of the council, include in each annual report it prepares under the **Local Government Act 1989** the information required by paragraphs (a) to (j) of section 104, and for that purpose, a reference in those paragraphs to a public body is to be taken to be a reference to that council.

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**PART 9A—OVERSIGHT BY SPECIAL INVESTIGATIONS  
MONITOR**

Pt 9A  
(Heading and  
ss 105A–  
105N)  
inserted by  
No. 79/2004  
s. 126 (as  
amended by  
No. 97/2004  
ss 7(5)(6),  
9(12)(a)–(c)).

**105A Role of Special Investigations Monitor**

S. 105A  
inserted by  
No. 79/2004  
s. 126.

The role of the Special Investigations Monitor under this Part is to—

- (a) monitor compliance with this Act by the Director, members of staff of the Office of Police Integrity and persons engaged by the Director under section 17(1)(b) of the **Police Integrity Act 2008**; and
- (b) assess the questioning of persons attending the Director in the course of an investigation under Part 5 or 7 concerning the relevance of the questioning and its appropriateness in relation to the purpose of the investigation; and
- (c) assess requirements made by the Director for persons to produce documents or other things in the course of an investigation under Part 5 or 7 concerning the relevance of the requirements and their appropriateness in relation to the purpose of the investigation; and
- (d) investigate any complaints made to the Special Investigations Monitor under this Part; and
- (e) formulate recommendations and make reports as a result of performing functions under paragraphs (a), (b), (c) and (d).

S. 105A(a)  
amended by  
No. 34/2008  
s. 143(Sch. 2  
item 14.6).

**s. 105B**

S. 105B  
inserted by  
No. 79/2004  
s. 126,  
amended by  
No. 69/2009  
s. 54(Sch. Pt 2  
item 58.1).

**105B Director must report summonses to Special Investigations Monitor**

The Director must give a written report to the Special Investigations Monitor within 3 days after the issue of a summons under section 17 of the **Evidence (Miscellaneous Provisions) Act 1958** in relation to an investigation by the Director under Part 5 or 7, setting out—

- (a) the name of the person summoned; and
- (b) the reasons the summons was issued.

S. 105C  
inserted by  
No. 79/2004  
s. 126.

**105C Director must report arrest warrants to Special Investigations Monitor**

The Director must give a written report to the Special Investigations Monitor within 3 days after the issue of a warrant under section 61H(2)(b) or 61K(2), setting out—

- (a) the reasons the warrant was issued; and
- (b) the relevance of the warrant to the purpose of the investigation in relation to which it was issued.

S. 105D  
inserted by  
No. 79/2004  
s. 126.

**105D Director must report other matters to Special Investigations Monitor**

(1) This section applies if—

S. 105D(1)(a)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 2  
item 58.1).

- (a) a person attends the Director in the course of an investigation by the Director under Part 5 or 7 in compliance with a summons issued under section 17 of the **Evidence (Miscellaneous Provisions) Act 1958**; or
- (b) a person attending the Director voluntarily in the course of an investigation by the Director under Part 5 or 7 is required—
  - (i) to be sworn or to make an affirmation;  
or

- 
- (ii) to answer a question; or
- (c) a person attends the Director in the course of an investigation by the Director under Part 5 or 7 and the Director issues a certificate under section 61B(3) in relation to the provision of information, production of a document or thing or the giving of evidence by the person.
- (2) As soon as practicable after the person is excused from attendance, the Director must give a written report to the Special Investigations Monitor, setting out—
- (a) the reasons the person attended and the place and time the person attended; and
  - (b) the name of the person and of any other person who was present during the attendance; and
  - (c) the relevance of the attendance to the purpose of the investigation; and
  - (d) if subsection (1)(c) applies—
    - (i) the reasons why the certificate was issued; and
    - (ii) the relevance of the certificate to the purpose of the investigation; and
  - (e) any other prescribed matters.
- (3) A report under subsection (2) must be accompanied by a copy of the video-recording made under section 61BA and, if a transcript is prepared, a copy of the transcript.

**s. 105E**

S. 105E  
inserted by  
No. 79/2004  
s. 126.

**105E Complaints to Special Investigations Monitor**

S. 105E(1)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 2  
item 58.1).

- (1) This section applies to a person who has attended the Director in the course of an investigation by the Director under Part 5 or 7 for the purposes of providing information, producing a document or thing or giving evidence (whether voluntarily or in answer to a summons issued under section 17 of the **Evidence (Miscellaneous Provisions) Act 1958** or otherwise).
- (2) The person may make a complaint to the Special Investigations Monitor, within 3 days after the person was excused from attendance, that the person was not afforded adequate opportunity to convey his or her appreciation of the relevant facts to the Director.
- (3) A complaint may be made orally or in writing.

S. 105F  
inserted by  
No. 79/2004  
s. 126.

**105F Special Investigations Monitor may refuse to investigate complaint**

The Special Investigations Monitor may refuse to investigate a complaint if he or she considers that—

- (a) the subject-matter of the complaint is trivial;  
or
- (b) the complaint is frivolous or vexatious or is not made in good faith.

S. 105G  
inserted by  
No. 79/2004  
s. 126 (as  
amended by  
No. 97/2004  
s. 9(12)(a)).

**105G Investigation of complaints**

- (1) The Special Investigations Monitor must investigate a complaint unless he or she refuses to investigate it under section 105F.

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- (2) For the purposes of the investigation of a complaint the Special Investigations Monitor—
    - (a) may, but is not required to, hold a hearing; and
    - (b) may obtain information from any persons and in any manner he or she considers appropriate; and
    - (c) may regulate the procedure as he or she thinks fit.
  - (3) An investigation, including any hearing, is to be conducted in private.
  - (4) The Special Investigations Monitor may commence or continue to investigate a complaint despite the fact that any proceedings are on foot, or are instituted, in any court or tribunal that relate to or are otherwise connected with the subject-matter of the complaint.
  - (5) If the Special Investigations Monitor is or becomes aware that proceedings referred to in subsection (4) are on foot or have been instituted, the Special Investigations Monitor must take all reasonable steps to ensure that the conduct of the investigation does not prejudice those proceedings.

**105H Recommendations by Special Investigations Monitor**

S. 105H  
inserted by  
No. 79/2004  
s. 126.

- (1) The Special Investigations Monitor may at any time make recommendations to the Director as to the taking of any action that the Special Investigations Monitor considers should be taken.
- (2) Without limiting subsection (1), recommended action may include—
  - (a) taking steps to prevent any conduct from continuing or occurring in the future;

s. 105I

- (b) taking action to remedy any harm or loss arising from any conduct.
- (3) The Special Investigations Monitor may require the Director to give a report to the Special Investigations Monitor, within the time specified by the Special Investigations Monitor stating—
  - (a) whether or not the Director has taken, or proposes to take, any action recommended by the Special Investigations Monitor; and
  - (b) if the Director has not taken any recommended action, or proposes not to take any recommended action, the reasons for not taking or proposing to take the action.
- (4) The Director must comply with a requirement of the Special Investigations Monitor under subsection (3).

S. 105I  
inserted by  
No. 79/2004  
s. 126 (as  
amended by  
No. 97/2004  
s. 9(12)(b)),  
amended by  
No. 34/2008  
s. 143(Sch. 2  
item 14.7).

#### **105I Requirement to provide assistance**

The Director must give, and must ensure that each member of staff of the Office of Police Integrity and each person engaged under section 17(1)(b) of the **Police Integrity Act 2008** gives, the Special Investigations Monitor any assistance the Special Investigations Monitor reasonably requires to enable the Special Investigations Monitor to perform functions under this Act.

S. 105J  
inserted by  
No. 79/2004  
s. 126 (as  
amended by  
No. 97/2004  
s. 9(12)(b)).

#### **105J Powers of entry and access**

- (1) For the purpose of performing his or her functions under this Part, the Special Investigations Monitor—
  - (a) after notifying the Director, may enter at any reasonable time premises occupied by the Office of Police Integrity; and
  - (b) is entitled to have full and free access at all reasonable times to all records of the Office of Police Integrity that are relevant to the

performance of the Special Investigations Monitor's functions; and

- (c) may require the Director, a member of staff of the Office of Police Integrity or a person engaged under section 17(1)(b) of the **Police Integrity Act 2008** to give the Special Investigations Monitor any information that the Special Investigations Monitor considers necessary, being information—
- (i) that is in the person's possession, or to which the person has access; and
  - (ii) that is relevant to the performance of the Special Investigations Monitor's functions.

S. 105J(1)(c) amended by No. 34/2008 s. 143(Sch. 2 item 14.8).

- (2) The Special Investigations Monitor may exercise a power under this section only if he or she considers that the Director has wilfully—
- (a) failed to provide information that the Director is required to provide in a report to the Special Investigations Monitor under this Part; or
  - (b) failed to comply with section 105I.

**105K Requirement to answer questions and produce documents**

S. 105K inserted by No. 79/2004 s. 126 (as amended by No. 97/2004 s. 9(12)(b)).

- (1) The Special Investigations Monitor may, by written notice, require the Director, a member of staff of the Office of Police Integrity or a person engaged under section 17(1)(b) of the **Police Integrity Act 2008** to—

S. 105K(1) amended by No. 34/2008 s. 143(Sch. 2 item 14.9).

- (a) attend the Special Investigations Monitor at a specified time and place to answer any questions or provide any information; or

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- (b) produce any document or other thing that is in the person's possession or control and that is relevant to the functions of the Special Investigations Monitor under this Part.
- (2) A person who is given a notice under subsection (1) must not, without reasonable excuse—
- (a) fail to attend or to produce any document or other thing as required by the notice; or
  - (b) refuse or fail to answer a question that he or she is required to answer by the Special Investigations Monitor; or
  - (c) refuse or fail to provide any information that he or she is required to provide by the Special Investigations Monitor.
- (3) A person who is given a notice under subsection (1) must not give any answer or provide any information that he or she knows is false or misleading in a material particular.
- (4) A person who contravenes subsection (2) or (3) is guilty of an indictable offence and is liable to level 6 imprisonment (5 years maximum).
- (5) The Special Investigations Monitor may exercise a power under this section only if he or she considers that the Director has wilfully—
- (a) failed to provide information that the Director is required to provide in a report to the Special Investigations Monitor under this Part; or
  - (b) failed to comply with section 105I.

**105L Annual and other reports by Special Investigations Monitor**

S. 105L  
inserted by  
No. 79/2004  
s. 126 (as  
amended by  
No. 97/2004  
s. 9(12)(c)).

- (1) As soon as practicable after the end of each financial year, the Special Investigations Monitor must cause a report to be laid before each House of the Parliament in relation to the performance of the Special Investigations Monitor's functions under this Part.
- (2) The report must include details of the following matters—
  - (a) compliance with this Act during the financial year by the Director, members of staff of the Office of Police Integrity and persons engaged by the Director under section 17(1)(b) of the **Police Integrity Act 2008**; and
  - (b) the extent to which—
    - (i) any questions asked of persons summoned; and
    - (ii) any requirements to produce documents or other things under a summons—  
during the financial year were relevant to the investigation in relation to which the questions were asked or the requirements were made; and
  - (c) the comprehensiveness and adequacy of reports made to the Special Investigations Monitor by the Director under this Part during the financial year; and
  - (d) the extent to which action recommended by the Special Investigations Monitor to be taken by the Director has been taken during the financial year.

S. 105L(2)(a)  
amended by  
No. 34/2008  
s. 143(Sch. 2  
item 14.10).

**s. 105N**

- (3) The Special Investigations Monitor may at any time cause a report to be laid before each House of the Parliament on any matter relevant to the performance of the Special Investigations Monitor's functions under this Part.
- (4) A report under this section must not contain any information that identifies, or is likely to identify—
- (a) any person who has attended the Director in the course of an investigation by the Director under Part 5 or 7; or
  - (b) the nature of any ongoing investigation under this Act or any ongoing investigation by the police force or members of the police force.

**S. 105M**  
inserted by  
No. 79/2004  
s. 126 (as  
amended by  
No. 97/2004  
s. 7(5)),  
repealed by  
No. 34/2008  
s. 143(Sch. 2  
item 14.11).

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**S. 105N**  
inserted by  
No. 79/2004  
s. 126 (as  
amended by  
No. 97/2004  
s. 7(6)).

### **105N Delegation**

The Special Investigations Monitor may, by instrument, delegate to an employee in the office of the Special Investigations Monitor any function, duty or power of the Special Investigations Monitor under this Act other than—

- (a) a duty or power to make a report under section 105L or 105M; or
- (b) this power of delegation.

**PART 10—GENERAL**

**106 Offence to make false disclosure**

A person must not knowingly provide false information under this Act, intending that it be acted on as a disclosed matter, to—

- (a) the President of the Legislative Council; or
- (b) the Speaker of the Legislative Assembly; or
- (c) the Ombudsman; or
- (d) the Director; or

S. 106(d)  
amended by  
Nos 32/2004  
s. 25, 63/2004  
s. 30(1)(e).

- (e) the Chief Commissioner of Police; or
- (f) a public body.

Penalty: 240 penalty units or 2 years imprisonment or both.

**107 Protection of Ombudsman and others**

S. 107  
(Heading)  
amended by  
No. 63/2004  
s. 30(1)(f).

- (1) None of the following is liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which they would have been liable apart from this section in respect of any act done or purporting to be done under this Act, unless the act was done in bad faith—

S. 107(1)  
amended by  
No. 32/2004  
s. 25,  
substituted by  
No. 63/2004  
s. 30(2).

- (a) the Ombudsman;
- (b) an officer of the Ombudsman;
- (c) the Director;
- (d) a member of staff of the Office of Police Integrity;

Whistleblowers Protection Act 2001  
No. 36 of 2001  
Part 10—General

s. 107

S. 107(1)(e)  
amended by  
No. 34/2008  
s. 143(Sch. 2  
item 14.12(a)).

(e) a person who has taken an oath or made an affirmation under section 18(2) of the **Police Integrity Act 2008**;

S. 107(1)(f)  
amended by  
No. 34/2008  
s. 143(Sch. 2  
item 14.12(b)).

(f) a person (other than a natural person) engaged under section 17(1)(b) of the **Police Integrity Act 2008**, if any officer or employee of the person has taken an oath or made an affirmation under section 18(2) of that Act;

S. 107(1)(g)  
amended by  
No. 34/2008  
s. 143(Sch. 2  
item 14.12(b)).

(g) the members of a body engaged under section 17(1)(b) of the **Police Integrity Act 2008**, if any member, officer or employee of the body has taken an oath or made an affirmation under section 18(2) of that Act.

S. 107(2)  
amended by  
Nos 32/2004  
s. 25, 63/2004  
s. 30(3)(a).

- (2) No civil or criminal proceedings may be brought against a person referred to in subsection (1) in respect of any act of a kind referred to in subsection (1) without the leave of the Supreme Court.
- (3) The Supreme Court may not give leave unless it is satisfied that there is substantial ground to believe that the person to be proceeded against has acted in bad faith.

- (4) Despite subsections (1), (2) and (3)—  
(a) no order may be made—

S. 107(4)(a)(i)  
amended by  
Nos 32/2004  
s. 25, 63/2004  
s. 30(3)(b).

(i) restraining the Ombudsman or the Director from carrying out, or compelling him or her to carry out, any investigation; or

S. 107(4)(a)(ii)  
amended by  
Nos 32/2004  
s. 25, 63/2004  
s. 30(3)(b).

(ii) restraining the Ombudsman or the Director from reporting on, or compelling him or her to report on, the findings of any investigation; or

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- (iii) restraining the Ombudsman from making a recommendation, or compelling him or her to make a recommendation, in respect of a public officer or public body in a report of any investigation; and
- (b) no proceedings may be brought against the Ombudsman under which the issue of such an order is sought.
- (5) A person referred to in subsection (1) may not be called to give evidence in any court or in any legal proceedings or before the Police Appeals Board in respect of any matter coming to his or her knowledge in the exercise of functions under this Act.

S. 107(5)  
amended by  
No. 32/2004  
s. 25,  
substituted by  
No. 63/2004  
s. 30(4).

**107A Protection of legal practitioners and witnesses**

S. 107A  
inserted by  
No. 79/2004  
s. 127.

- (1) A legal practitioner representing a person in an investigation by the Ombudsman or the Director under Part 5 or 7, or a legal practitioner assisting the Ombudsman or the Director in the investigation, has the same protection and immunity as a legal practitioner has in representing a party in proceedings in the Supreme Court.
- (2) A person appearing as a witness in an investigation by the Ombudsman or the Director under Part 5 or 7 has the same protection and immunity as a witness has in proceedings in the Supreme Court.

## 108 Evidence not admissible

(1) Information is not admissible as evidence (if given by a party) in legal proceedings if it was obtained or received by the party—

S. 108(1)(a)  
amended by  
Nos 32/2004  
s. 25, 63/2004  
s. 30(5).

(a) from the Ombudsman, the Director, the Chief Commissioner of Police or a public body in the course of or as a result of—

(i) a disclosure under Part 2; or

(ii) the investigation of a disclosed matter under this Act; or

(b) from any person who obtained it in that way.

(2) Subsection (1) does not apply to—

S. 108(2)(a)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 2  
item 58.1).

(a) proceedings in relation to an offence against section 18, 60 or 106 of this Act or section 19 of the **Evidence (Miscellaneous Provisions) Act 1958**;

(b) proceedings under section 19 or 20 of this Act; or

S. 108(2)(c)  
amended by  
No. 79/2004  
s. 128(a).

(c) a criminal or disciplinary proceeding taken against a member of the police force as a result of an investigation of a disclosed matter by the Chief Commissioner of Police under Part 7; or

S. 108(2)(d)  
inserted by  
No. 79/2004  
s. 128(b).

(d) proceedings for contempt of the Director under section 61H.

(3) Nothing in this section affects the operation of section 90.

## 109 Exemption from Freedom of Information Act 1982

- (1) The **Freedom of Information Act 1982** does not apply to a document that is in the possession of a public body that is an agency under that Act, or is deemed under an enactment to be an agency under that Act, or a relevant person or body, to the extent to which the document discloses information—
- (a) in relation to a disclosure made under Part 2; or
  - (b) likely to lead to the identification of a person who made a disclosure under Part 2; or
  - (c) likely to lead to the identification of a person against whom a disclosure under Part 2 is made.

S. 109(1)  
amended by  
Nos 32/2004  
s. 25, 63/2004  
s. 30(6)(a).

- (2) In this section—

***agency*** has the same meaning as in the **Freedom of Information Act 1982**;

***document*** has the same meaning as in the **Freedom of Information Act 1982**;

S. 109(2)  
def. of  
*document*  
amended by  
No. 63/2004  
s. 30(6)(b).

***relevant person or body*** means—

- (a) the Ombudsman;
- (b) an officer of the Ombudsman;
- (c) the Director;
- (d) a member of staff of the Office of Police Integrity;
- (e) a person engaged under section 17(1)(b) of the **Police Integrity Act 2008**, or an officer or employee of such a person;

S. 109(2)  
def. of  
*relevant person or body*  
inserted by  
No. 63/2004  
s. 30(6)(c),  
amended by  
No. 34/2008  
s. 143(Sch. 2  
item 14.13).

- (f) a body engaged under section 102E(1)(b) of the **Police Regulation Act 1958**, or a member, officer or employee of such a body;
- (g) the Chief Commissioner of Police.

S. 110 amended by No. 32/2004 s. 26 (ILA s. 39B(1)).

S. 110(2) inserted by No. 32/2004 s. 26.

S. 110(3) inserted by No. 63/2004 s. 31.

S. 110(4) inserted by No. 79/2004 s. 129.

### 110 Supreme Court—limitation of jurisdiction

- (1) It is the intention of section 107 of this Act to alter or vary section 85 of the **Constitution Act 1975**.
- (2) It is the intention of section 107 of this Act, as amended by section 25 of the **Ombudsman Legislation (Police Ombudsman) Act 2004**, to alter or vary section 85 of the **Constitution Act 1975**.
- (3) It is the intention of section 107, as amended by section 30 of the **Major Crime Legislation (Office of Police Integrity) Act 2004**, to alter or vary section 85 of the **Constitution Act 1975**.
- (4) It is the intention of section 107, as it applies on or after the commencement of Part 10 of the **Major Crime (Investigative Powers) Act 2004**, to alter or vary section 85 of the **Constitution Act 1975**.

### 111 Service on a person making a disclosure

If a provision of this Act requires that a person who has made a disclosure under Part 2 be notified or given notice or information, that notification, notice or information must be given—

- (a) in writing; and
- (b) personally or by post.

**111A Transitional provision on creation of office of Police Ombudsman**

S. 111A  
inserted by  
No. 32/2004  
s. 27.

(1) This Act, as amended by the amending Act, applies on and after the commencement day to a disclosure under this Act, whether the disclosure was made before, on or after the commencement day.

(2) In this section—

*amending Act* means the **Ombudsman Legislation (Police Ombudsman) Act 2004**;

*commencement day* means the day on which the amending Act comes into operation.

**111B Transitional provision on creation of Office of Police Integrity**

S. 111B  
inserted by  
No. 63/2004  
s. 32.

(1) This Act, as amended by the amending Act, applies on and after the commencement day to a disclosure under this Act, whether the disclosure was made before, on or after the commencement day.

(2) In this section—

*amending Act* means the **Major Crime Legislation (Office of Police Integrity) Act 2004**;

*commencement day* means the day on which section 32 of the amending Act comes into operation.

**111C Transitional provision—Whistleblowers Protection Amendment Act 2008**

S. 111C  
inserted by  
No. 57/2008  
s. 6.

(1) Subject to subsections (2) and (3), this Act, as amended by the **Whistleblowers Protection Amendment Act 2008**, applies to any report laid before a House of Parliament under section 103 after the commencement of that Act even if—

s. 112

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- (a) an investigation to which the report relates was commenced or conducted before that commencement;
- (b) a disclosure to which the report relates was made before that commencement.
- (2) Subsection (1) does not apply to any report that relates to an investigation commenced or conducted before the commencement of the **Whistleblowers Protection Amendment Act 2008** if a report in relation to that investigation had been previously made under section 63.
- (3) Subsection (1) does not apply to any report that relates to a disclosure that was made before the commencement of the **Whistleblowers Protection Amendment Act 2008** if a report in relation to that disclosure had been previously laid before a House of Parliament under section 103.

## 112 Regulations

The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

Pt 11  
(Heading and  
ss 113–119)  
repealed by  
No. 28/2007  
s. 3(Sch.  
item 77).

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## ENDNOTES

### 1. General Information

*Minister's second reading speech—*

*Legislative Assembly: 31 August 2000*

*Legislative Council: 1 May 2001*

The long title for the Bill for this Act was "A Bill to encourage and facilitate disclosures of improper conduct by public officers and public bodies, to protect persons making those disclosures and others from reprisals, to provide for the matters disclosed to be properly investigated and dealt with and for other purposes."

#### **Constitution Act 1975:**

*Section 85(5) statement:*

*Legislative Assembly: 31 August 2000*

*Legislative Council: 1 May 2001*

*Absolute majorities:*

*Legislative Assembly: 5 April 2001, 14 June 2001*

*Legislative Council: 16 May 2001*

The **Whistleblowers Protection Act 2001** was assented to on 19 June 2001 and came into operation as follows:

Sections 1, 2, 114, 119 on 19 June 2001: section 2(1); rest of Act on 1 January 2002: section 2(2).

Whistleblowers Protection Act 2001  
No. 36 of 2001

Endnotes

## 2. Table of Amendments

This Version incorporates amendments made to the **Whistleblowers Protection Act 2001** by Acts and subordinate instruments.

Where a provision has expired, the provision has been omitted and an explanatory sidenote included.

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### **Whistleblowers Protection Act 2001, No. 36/2001**

*Assent Date:* 19.6.01  
*Commencement Date:* S. 61J on 23.10.11: s. 61J  
*Current State:* This information relates only to the provision/s amending the **Whistleblowers Protection Act 2001**

### **Parliamentary Committees Act 2003, No. 110/2003**

*Assent Date:* 9.12.03  
*Commencement Date:* S. 64 on 10.12.03: s. 2  
*Current State:* This information relates only to the provision/s amending the **Whistleblowers Protection Act 2001**

### **Ombudsman Legislation (Police Ombudsman) Act 2004, No. 32/2004**

*Assent Date:* 1.6.04  
*Commencement Date:* Ss 21–27 on 2.6.04: s. 2  
*Current State:* This information relates only to the provision/s amending the **Whistleblowers Protection Act 2001**

### **Major Crime (Special Investigations Monitor) Act 2004, No. 62/2004**

*Assent Date:* 12.10.04  
*Commencement Date:* S. 17 on 16.11.04: Special Gazette (No. 237) 16.11.04 p. 2  
*Current State:* This information relates only to the provision/s amending the **Whistleblowers Protection Act 2001**

### **Major Crime Legislation (Office of Police Integrity) Act 2004, No. 63/2004**

*Assent Date:* 12.10.04  
*Commencement Date:* Ss 30–32 on 16.11.04: Special Gazette (No. 237) 16.11.04 p. 1  
*Current State:* This information relates only to the provision/s amending the **Whistleblowers Protection Act 2001**

### **Major Crime (Investigative Powers) Act 2004, No. 79/2004** (as amended by No. 97/2004)

*Assent Date:* 16.11.04  
*Commencement Date:* Ss 104, 106–129 on 16.11.04: Special Gazette (No. 237) 16.11.04 p. 2; s. 105 on 1.7.05: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Whistleblowers Protection Act 2001**

Whistleblowers Protection Act 2001  
No. 36 of 2001

Endnotes

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**Public Administration Act 2004, No. 108/2004**

*Assent Date:* 21.12.04  
*Commencement Date:* S. 117(1)(Sch. 3 item 234) on 5.4.05: Government Gazette 31.3.05 p. 602  
*Current State:* This information relates only to the provision/s amending the **Whistleblowers Protection Act 2001**

**Legal Profession (Consequential Amendments) Act 2005, No. 18/2005**

*Assent Date:* 24.5.05  
*Commencement Date:* S. 18(Sch. 1 item 117) on 12.12.05: Government Gazette 1.12.05 p. 2781  
*Current State:* This information relates only to the provision/s amending the **Whistleblowers Protection Act 2001**

**Parliamentary Administration Act 2005, No. 20/2005**

*Assent Date:* 24.5.05  
*Commencement Date:* Ss 45, 52(6) on 1.7.05: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Whistleblowers Protection Act 2001**

**Education and Training Reform Act 2006, No. 24/2006**

*Assent Date:* 16.5.06  
*Commencement Date:* S. 6.1.2(Sch. 7 item 47) on 1.7.07: Government Gazette 28.6.07 p. 1304  
*Current State:* This information relates only to the provision/s amending the **Whistleblowers Protection Act 2001**

**Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006**

*Assent Date:* 15.8.06  
*Commencement Date:* S. 42(Sch. item 38) on 23.4.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Whistleblowers Protection Act 2001**

**Statute Law Revision Act 2007, No. 28/2007**

*Assent Date:* 26.6.07  
*Commencement Date:* S. 3(Sch. item 77) on 27.6.07: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Whistleblowers Protection Act 2001**

**Police Integrity Act 2008, No. 34/2008**

*Assent Date:* 1.7.08  
*Commencement Date:* S. 143(Sch. 2 item 14) on 5.12.08: Special Gazette (No. 340) 4.12.08 p. 1  
*Current State:* This information relates only to the provision/s amending the **Whistleblowers Protection Act 2001**

**Whistleblowers Protection Amendment Act 2008, No. 57/2008**

*Assent Date:* 23.9.08  
*Commencement Date:* 24.9.08: s. 2  
*Current State:* All of Act in operation

Whistleblowers Protection Act 2001  
No. 36 of 2001

**Endnotes**

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**Major Crime (Investigative Powers) and Other Acts Amendment Act 2008,  
No. 60/2008**

*Assent Date:* 22.10.08  
*Commencement Date:* S. 13 on 23.10.08: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Whistleblowers Protection Act 2001**

**Statute Law Amendment (Evidence Consequential Provisions) Act 2009,  
No. 69/2009**

*Assent Date:* 24.11.09  
*Commencement Date:* S. 54(Sch. Pt 1 item 65), (Sch. Pt 2 item 58) on 1.1.10:  
s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Whistleblowers Protection Act 2001**

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### 3. Explanatory Details

No entries at date of publication.