

Serial
Public Interest Disclosure Bill 2005
Dr Toyne

**A BILL
for
AN ACT**

about the disclosure of improper conduct by public officers and public bodies,
and for related purposes

DRAFT ONLY (3)

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NORTHERN TERRITORY OF AUSTRALIA
PUBLIC INTEREST DISCLOSURE ACT 2005

Act No. [] of 2005

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2005

AN ACT

about the disclosure of improper conduct by public officers and public bodies,
and for related purposes

[Assented to [] 2005]
[Second reading [] 2005]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Public Interest Disclosure Act 2005*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Purposes

- (1) The purposes of this Act are –
 - (a) to encourage and facilitate disclosures of improper conduct by public officers and public bodies;
 - (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) The purposes of this Act are achieved mainly by conferring the following functions on the Ombudsman:
- (a) to determine whether or not 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;
 - (d) to monitor investigations by public bodies under Part 6;
 - (e) to monitor investigations by the Commissioner of Police under Part 7;
 - (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.

4. Interpretation

(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;
- (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;
- (c) conduct of a public officer, a former public officer or a public body that amounts to a breach of public trust;

- (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 functions in that capacity (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);

"council member" means a member of a municipal council under the *Local Government Act*;

"detrimental action" includes –

- (a) action causing injury, loss or damage;
- (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;

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

"improper conduct" means –

- (a) corrupt conduct;
- (b) a substantial mismanagement of public resources;
- (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
- (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;

"municipal council" has the same meaning as in the *Local Government Act*;

"Ombudsman" means the Ombudsman for the Northern Territory;

"Police Minister" means the Minister primarily responsible for the administration of the *Police Administration Act*;

"police officer" means a member of the Police Force;

"protected disclosure" has the meaning in section 14;

"public body" has the meaning in section 5;

"public hospital" means a hospital declared under section 6(2) of the *Medical Services Act*;

"public officer" has the meaning in section 6;

"responsible chief executive" means –

- (a) for a public body, the chief executive responsible for the public body; or
- (b) for a public officer, the chief executive responsible for the public officer;

"responsible Minister" means –

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

"university" means –

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

(2) For this Act, the chief executive officer of a municipal council is taken to be the chief executive officer of a public body for an officer or employee of that council.

(3) For this Act, the Commissioner of Police is taken to be the chief executive officer of a public body for a person who is employed in the office of the Commissioner of Police and who is not a police officer.

5. Public bodies

(1) The following are public bodies:

- (a) an Agency;

- (b) the chief executive officer of a municipal council, but only for an officer or employee of that council;
 - (c) the Commissioner of Police, but only for a person employed in that office who is not a police officer;
 - (d) a body, whether incorporated or not, 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 Administrator or a Minister;
 - (f) a company in which all the shares, or a majority of the shares, are held by the Territory or another public body;
 - (g) a body, whether incorporated or not –
 - (i) supported directly or indirectly by government funds or other assistance; or
 - (ii) over which the Territory is in a position to exercise control, that is prescribed to be a public body;
 - (h) a university;
 - (i) a public hospital;
 - (j) a Territory funded nursing home declared under section 6(2) of the *Medical Services Act*;
 - (k) a person who provides goods or services, or carries out works, under a contract or other arrangement with a public body, but only in that capacity;
- (2) The following are not public bodies:
- (a) a court;
 - (b) a board, tribunal, commission or other body presided over by a Judge, magistrate or legal practitioner presiding in that capacity by virtue of a statutory requirement and appointment.

6. Public officers

- (1) The following are public officers:
 - (a) a member of the Legislative Assembly;
 - (b) a council member;

- (c) a member, officer or employee of a public body;
 - (d) a member of the governing body of a public body;
 - (e) an officer or employee of a municipal council;
 - (f) a member of the academic staff of a university;
 - (g) a police officer;
 - (h) a person who is employed in the office of the Commissioner of Police and who is not a police officer;
 - (i) the holder of an office established by or under an Act to which the right to appoint is vested in the Administrator or a Minister.
- (2) The following persons are not public officers:
- (a) a Judge;
 - (b) the Master of the Supreme Court;
 - (c) a magistrate;
 - (d) the Director of Public Prosecutions;
 - (e) the Auditor-General;
 - (f) the Ombudsman;
 - (g) the Electoral Commissioner;
 - (h) an officer of the Assembly within the meaning of the *Legislative Assembly (Powers and Privileges) Act*;
 - (i) a member of the personal staff of a Judge, the Master of the Supreme Court or a magistrate.

PART 2 – DISCLOSURES OF IMPROPER CONDUCT

7. Who can make disclosures 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 that capacity; or
- (b) has taken, is taking or proposes to take detrimental action in contravention of section 20,

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

8. To whom can disclosures 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 – the public body.

(2) A disclosure that relates to a member of the Legislative Assembly must be made to the Speaker.

(3) A disclosure that relates to the Commissioner of Police must be made to the Ombudsman.

(4) A disclosure that relates to another police officer may be made to –

- (a) the Ombudsman; or
- (b) the Commissioner of Police.

(5) A disclosure –

- (a) may be made orally or in writing; and
- (b) must be made in accordance with the prescribed procedure.

(6) A disclosure made in relation to a member of the Legislative Assembly is not a contempt of the Legislative Assembly.

9. Anonymous disclosures

A person may make a disclosure under this Part anonymously.

10. Identity of person who engaged in conduct need not be known

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

11. Disclosures about past conduct

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

12. Privileges of Legislative Assembly and legal professional privilege not affected

(1) This Act does not limit the privileges, immunities and powers held, possessed or enjoyed by custom, statute or other law or otherwise of –

- (a) the Legislative Assembly;
- (b) the Speaker; or
- (c) the members and committees of the Legislative Assembly.

(2) This Act does not entitle a person to disclose information that is the subject of legal professional privilege.

PART 3 – PROTECTION OF PERSONS MAKING DISCLOSURES AND PROTECTION FROM REPRISALS FOR DISCLOSURES

13. Application of Part

This Part only applies in relation to a protected disclosure.

14. Protected disclosures

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

15. Certain further information also protected

(1) Subject to section 26, if a person who makes a disclosure in accordance with Part 2 provides further information that relates to the disclosure to a person or body listed in subsection (2), the further information must be treated as if it were a protected disclosure for this Part.

- (2) Subsection (1) applies to further information provided to –
- (a) the Speaker;
 - (b) the Ombudsman;
 - (c) the Commissioner of Police; or
 - (d) a public body.

16. 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.

17. Confidentiality provisions do not apply

Without limiting section 16, a person who makes a protected disclosure does not by doing so –

- (a) commit an offence against a provision of an Act that imposes a duty to maintain confidentiality with respect to a matter or another 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.

18. Protection from defamation action

Without limiting section 16, in proceedings for defamation, there is a defence of absolute privilege in respect of the making of a protected disclosure.

19. Liability for own conduct

Despite anything 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.

20. 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 imprisonment for 2 years.

(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 a 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) A reason referred to in subsection (2) must be a substantial reason, but need not be the only or dominant reason, for taking or threatening the action.

(4) The defendant has the onus of proving –

- (a) the action was not taken or threatened for a reason referred to in subsection (2); or
- (b) if the action was taken or threatened for a reason referred to in subsection (2) – the reason was not a substantial reason for taking or threatening the action.

(5) Despite section 52 of the *Justices Act*, a prosecution for an offence against subsection (1) may be commenced within 2 years after the offence is alleged to have been committed.

21. Proceedings for damages for reprisal

(1) A person who takes detrimental action against another person in reprisal for a protected disclosure is liable in damages to that other 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 another right or remedy available to the person arising from the detrimental action.

22. 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.

23. Injunction or order

(1) If, on receipt of an application under section 22, 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 22, may –

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

24. 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 –

- (a) the exercise of the functions under this Act of the Speaker, the Chief Minister, the Ombudsman, the Commissioner of Police or a public body;
- (b) any report or recommendation to be made under this Act;
- (c) any report referred to in Part 9;
- (d) any proceedings in relation to an offence against this section or section 61 or 105; or
- (e) any criminal or disciplinary proceedings taken against a police officer as a result of an investigation of a disclosed matter by the Commissioner of Police under Part 7.

Penalty: 60 penalty units or imprisonment for 6 months.

- (2) This section does not affect the operation of section 90.

25. Confidentiality guidelines

(1) The Ombudsman or a public body must not disclose information that might identify or tend to identify a person who made a protected disclosure or against whom a protected disclosure was made ("identifying information"), unless –

- (a) the person consents in writing to the disclosure of the identifying information;
 - (b) the principles of natural justice require that the identifying information be disclosed to a person whom the information provided in the protected disclosure may concern; or
 - (c) the Ombudsman or public body is of the opinion that disclosure of the identifying information is necessary to investigate effectively the matter raised by the protected disclosure or is otherwise in the public interest.
- (2) This section does not affect the operation of section 90.

26. 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 in relation 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.
- (2) If –
- (a) the Commissioner of Police or a public body concludes under Part 4 that a disclosure is not a public interest disclosure; and
 - (b) the person who made the disclosure does not, within 28 days of being notified of the conclusion, request the 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 Commissioner of Police or a public body of the subject matter of that disclosure or the provision to the Ombudsman, the 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 –

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

PART 4 – DETERMINATION OF PUBLIC INTEREST DISCLOSURES

Division 1 – Determination by Ombudsman

27. 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 or not the disclosure is a public interest disclosure.

(2) The Ombudsman may only determine that the disclosure is a public interest disclosure if 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 that capacity; or
- (b) has taken, is taking or proposes to take detrimental action in contravention of section 20.

(3) For the purpose of making a determination under subsection (1), the Ombudsman may, within the time referred to in subsection (1), seek the further information and make the inquiries the Ombudsman considers appropriate.

28. Notice of determination

(1) The Ombudsman must, within a reasonable time, notify the person who made the disclosure of the determination under section 27 in respect of the disclosure.

(2) Subsection (1) does not apply if the disclosure was anonymous.

29. Certain complaints about police officers to be investigated as public interest disclosures

If –

- (a) the Ombudsman determines that a disclosure in relation to a police officer is a public interest disclosure; and

- (b) the disclosure could constitute a complaint under the *Ombudsman (Northern Territory) Act*,

despite Part III of the *Ombudsman (Northern Territory) Act*, the subject matter of the disclosure must be investigated under this Act instead of under Part III of the *Ombudsman (Northern Territory) Act*.

30. 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 (Northern Territory) Act*,

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 (Northern Territory) Act*.

(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 (Northern Territory) Act*.

(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 (Northern Territory) Act*, the disclosure is taken to be a complaint made to the Ombudsman under that Act.

Division 2 – Disclosures made to public bodies

31. Consideration of whether or not disclosure is 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 or not the disclosure is a public interest disclosure.

(2) The public body may only reach the conclusion that the disclosure is a public interest disclosure if satisfied that the disclosure shows or tends to show that the public officer to whom it relates –

- (a) has engaged, is engaging or proposes to engage in improper conduct in that capacity; or

- (b) has taken, is taking or proposes to take detrimental action in contravention of section 20.

(3) For the purpose of reaching a conclusion under subsection (1), the public body may, within the period referred to in subsection (1), seek the further information and make the inquiries it considers appropriate.

32. If public body concludes disclosure is public interest disclosure

(1) If, under section 31, 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 or not the disclosure is a public interest disclosure.
- (2) Subsection (1)(a) does not apply if the disclosure was anonymous.

33. If public body concludes disclosure is not public interest disclosure

(1) If, under section 31, 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 or not the disclosure is a public interest disclosure; and
 - (ii) the person's request must be made within 28 days of the notification.
- (2) Subsection (1) does not apply if the disclosure was anonymous.

34. Request for referral to Ombudsman

If a person who is given notice under section 33 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 or not the disclosure is a public interest disclosure.

35. Determination by Ombudsman

(1) Division 1 applies in relation 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 or not the disclosure is a public interest disclosure.

Division 3 – Disclosures about police officers

36. Consideration of whether or not disclosure is public interest disclosure

(1) If a person makes a disclosure that relates to a police officer to the Ombudsman in accordance with Part 2, the Ombudsman must, within 45 days after receiving the disclosure, consider and reach a conclusion as to whether or not the disclosure is a public interest disclosure.

(2) If a person makes a disclosure that relates to a police officer to the Commissioner of Police in accordance with Part 2, the Commissioner of Police must, within 45 days after receiving the disclosure, consider and reach a conclusion as to whether or not the disclosure is a public interest disclosure.

(3) The Ombudsman or the Commissioner of Police (as the case requires) may only conclude that the disclosure is a public interest disclosure consider if satisfied that the disclosure shows or tends to show that the police officer to whom it relates –

- (a) has engaged, is engaging or proposes to engage in improper conduct in that capacity; or
- (b) has taken, is taking or proposes to take detrimental action in contravention of section 20.

37. If Commissioner concludes disclosure is public interest disclosure

(1) If, under section 36, the Commissioner of Police concludes that a disclosure is a public interest disclosure, he or she 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 or not it is a public interest disclosure.

(2) Subsection (1)(a) does not apply if the disclosure was anonymous.

38. If Commissioner concludes disclosure is not public interest disclosure

(1) If, under section 36, the Commissioner of Police concludes that a disclosure is not a public interest disclosure, he or she 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 that the disclosure be referred to the Ombudsman for a determination as to whether or not the disclosure is a public interest disclosure; and
 - (ii) the person's request must be made within 28 days of the notification.
- (2) Subsection (1) does not apply if the disclosure was anonymous .

39. Request for referral to Ombudsman

If a person who is given notice under section 38 requests within the required time that a disclosure be referred to the Ombudsman, the Commissioner of Police must immediately refer the disclosure to the Ombudsman for a determination as to whether or not the disclosure is a public interest disclosure.

40. Determination by Ombudsman

(1) Division 1 applies in relation 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 Commissioner of Police of the determination as to whether or not the disclosure is a public interest disclosure.

PART 5 – INVESTIGATION OF PUBLIC INTEREST DISCLOSURES BY OMBUDSMAN

Division 1 – Requirement to investigate

41. Duty to investigate

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

42. Matter does not have to be investigated if unreasonable delay in making disclosure

(1) The Ombudsman may decide not to investigate a disclosed matter 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.

43. Referral of matters for investigation otherwise than under this Act

(1) The Ombudsman may refer a disclosed matter to any of the following to investigate if the Ombudsman considers it appropriate:

- (a) the Commissioner of Police;
- (b) the Auditor-General;
- (c) a prescribed public body;
- (d) the prescribed holder of an office.

(2) Subsection (1) does not apply in relation to a disclosed matter that relates to a police officer.

44. Referral of public interest disclosures to public body for investigation

(1) 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.

(2) Part 6 applies in relation to the investigation of a matter referred to a public body under subsection (1).

(3) This section does not limit the operation of section 43.

45. Referral of certain public interest disclosures to Commissioner for investigation

(1) The Ombudsman may refer a disclosed matter to the Commissioner of Police to investigate if –

- (a) the matter relates to a police officer other than the Commissioner of Police or a Deputy or Assistant Commissioner of Police; and
- (b) the Ombudsman considers it appropriate.

(2) Part 7 applies in relation to the investigation of a matter referred to the Commissioner of Police under subsection (1).

46. Information Ombudsman may provide

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

47. 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 is an anonymous disclosure.

Division 2 – Investigation by Ombudsman

48. 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 considers appropriate.

49. Secondment of police officers for certain investigations

(1) The Ombudsman may request the Commissioner of Police to make available police officers to assist the Ombudsman in the investigation of a disclosed matter.

(2) On receiving the request, the Commissioner of Police must make available the police officers that the Commissioner of Police considers necessary to assist the Ombudsman in the investigation.

(3) A police officer made available to the Ombudsman under subsection (2) remains under the direction and control of the Commissioner of Police but must, in assisting the Ombudsman, have regard to the wishes of the Ombudsman concerning the conduct of the investigation.

50. Secondment of staff of public body 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 receiving the request, the prescribed public body must make available the staff that the prescribed public body considers necessary to assist the Ombudsman in the investigation .

(3) A person made available to the Ombudsman under section (2) 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 the investigation.

51. Notice of investigation

(1) Before conducting an investigation of a disclosed matter, the Ombudsman must in writing inform the relevant person or body specified in subsection (2) of that intention.

- (2) For subsection (1), information must be given to –
 - (a) if the disclosed matter relates to a public body or a public officer – either the responsible Minister or the chief executive officer of the public body;
 - (b) if the disclosed matter relates to the mayor of a municipal council –
 - (i) the Minister primarily responsible for local government; or
 - (ii) the chief executive officer of the municipal council;
 - (c) if the disclosed matter relates to a council member (other than the mayor) of a municipal council – the mayor and the chief executive officer of the municipal council;
 - (d) if the disclosed matter relates to the chief executive officer of a municipal council –
 - (i) the responsible Minister; and
 - (ii) the mayor of the council;
 - (e) if the disclosed matter relates to another officer or employee of a municipal council – the mayor and the chief executive officer of the municipal council;
 - (f) if the disclosed matter relates to the Commissioner of Police – the Police Minister; or
 - (g) if the disclosed matter relates to another police officer – the Commissioner of Police.

52. Investigation to be private

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

53. Hearing not required

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

54. 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.

55. Taking of evidence

(1) Subject to this Part, the Ombudsman may obtain information from any person and in any manner he or she considers appropriate for the purposes of an investigation of a disclosed matter.

(2) For an investigation of a disclosed matter, the Ombudsman may take a statutory declaration from any witness or other person.

56. Power to require answers etc. of police officers in certain investigations

(1) Without limiting section 55, in an investigation of a disclosed matter that relates to a police officer, the Ombudsman may direct a police officer to give any relevant information, produce any relevant document or answer any relevant question.

(2) A police officer who does not comply with a direction under subsection (1) commits a breach of discipline under section 76 of the *Police Administration Act*.

(3) Except in proceedings for perjury, for a breach of discipline under section 76 of the *Police Administration Act* 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 a court or a person or body authorised by an Act to take evidence on oath.

57. Disclosure of privileged or confidential information to Ombudsman

(1) An obligation to maintain confidentiality or another 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 56, 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.

58. Deliberations of Ministers and Legislative Assembly 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 Cabinet;
- (b) the deliberations of any committee consisting only of members of the Legislative Assembly if the committee is formed for the purpose of advising Ministers in respect of their deliberations;
- (c) any deliberations in private session of a committee of 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 45(1)(a) of the *Information Act*.

(3) A certificate issued by the Chief Minister 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.

59. Power to enter premises

In 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 that capacity; and
- (b) inspect those premises or anything in or on them.

60. 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, public officer, council member or police officer, before making the report, the Ombudsman must give an opportunity to comment on the matter to –

- (a) if the report may be adverse to a public body or public officer – the responsible Minister or responsible chief executive officer;
- (b) if the report may be adverse to a council member – the responsible Minister or the mayor of the municipal council;
- (c) if the report may be adverse to the Commissioner of Police – the Police Minister; or
- (d) if the report may be adverse to another police officer – the Commissioner of Police.

61. Obstruction

- (1) A person must not –
 - (a) without lawful excuse, wilfully obstruct, hinder or resist the Ombudsman in the exercise of his or her powers under this Part;
 - (b) without lawful excuse, refuse to or wilfully fail to comply with any lawful requirement of the Ombudsman under this Part;
 - (c) make a statement the person knows to be false or misleading in a material respect to the Ombudsman in the course of an investigation under this Part; or
 - (d) knowingly mislead or attempt to mislead the Ombudsman in the course of an investigation under this Part.

Penalty: 240 penalty units or imprisonment for 2 years.

- (2) In subsection (1)(b) –

"lawful requirement", in relation to a police officer, means a requirement of a kind that is agreed between the Ombudsman and the Commissioner of Police to be appropriate for the Ombudsman to make.

62. Opportunity to be heard before adverse report

The Ombudsman must not, in any report under this Part or Part 8, make any comment adverse to a person unless the person has been given an opportunity of being heard in the matter and the person's defence is fairly set out in the report.

Division 3 – Action on completion of investigation

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 responsible person; and

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

(2) For subsection (1), the responsible person is –

(a) if the findings relate to a public body or public officer – the responsible Minister or responsible chief executive officer;

(b) if the findings relate to a council member – the responsible Minister or the mayor of the municipal council;

(c) if the findings relate to the Commissioner of Police – the Police Minister;

(d) if the findings relate to another police officer – the Commissioner of Police.

(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.

64. Notice of implementation of recommendation

If the Ombudsman makes a recommendation in a report to a person under section 63, 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.

65. Implementation of recommendations about police officers

- (1) If –
 - (a) in a report under section 63 that relates to a police officer other than the Commissioner of Police, there is a recommendation as to the action to be taken as a result of the investigation; and
 - (b) the Commissioner of Police disagrees with the recommendation,

the Ombudsman and the Commissioner of Police must refer the matter to the Police Minister.

(2) The Police Minister may give directions as to the taking of any action recommended in that report.

(3) The Police Minister may refer to the Director of Public Prosecutions the question of whether or not criminal proceedings should be taken against the police officer to whom the report relates or another police officer.

66. Report to Legislative Assembly

(1) This section applies 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 council member.

(2) After considering any comments of the responsible Minister, responsible chief executive officer or mayor of the municipal council (as the case requires), the Ombudsman may give the Chief Minister a report on any matter to which the report, recommendations and comments relate.

(3) The Chief Minister must table a copy of the report in the Legislative Assembly with 3 sitting days after the Chief Minister receives the report.

67. Person who made disclosure to be informed

(1) If the Ombudsman investigates a disclosed matter or takes another 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 considers appropriate.

(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 the Ombudsman considers appropriate.

(4) The Ombudsman may disclose to the person who made the disclosure any additional information that the Ombudsman considers appropriate.

(5) This section does not apply if the disclosure was anonymous.

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;

(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) if the public body existed immediately before the commencement of this section – as soon as practicable after that commencement; and

(b) the public body is established on or after that commencement – as soon as practicable after that establishment.

(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;
- (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 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 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 considers appropriate 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 responsible Minister.

Division 2 – Requirement to investigate

72. Duty to investigate

Subject to this Division, a public body must investigate every disclosed matter the Ombudsman refers to the public 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;
- (b) the person is dissatisfied with the manner in which the public body is carrying out an investigation of the matter;
- (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.

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 Ombudsman may do

- (1) This section applies if –
 - (a) an investigation by a public body is referred to the Ombudsman under section 73;

- (b) a request is made under section 74; or
- (c) an investigation is taken over by the Ombudsman under section 75.
- (2) The Ombudsman may –
 - (a) commence a new investigation;
 - (b) complete the investigation;
 - (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.
- (3) In addition, if –
 - (a) a request is made under section 74; or
 - (b) 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.

(4) Part 5, Divisions 3 and 4 apply to an investigation commenced, referred to or taken over by the Ombudsman under this Division.

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.

(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.

(3) This section does not apply if the disclosure was anonymous.

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.

Division 4 – Action on investigation

81. What public body must do

(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) if the disclosed matter related to an officer or employee of a municipal council – the municipal council; or
 - (ii) if the disclosed matter related to another public officer or public body – the responsible Minister;
- (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 referred to in subsection (1)(b) may include –

- (a) the bringing of disciplinary proceedings against the person responsible for the conduct; and
- (b) the referral of the matter to an appropriate authority for further consideration.

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 any steps taken under section 81; and
- (b) the responsible person or body of any steps taken under section 81.

(2) For subsection (1), the responsible person or body is –

- (a) for a disclosed matter that relates to an officer or employee of a municipal council – the municipal council; or
- (b) for another disclosed matter – the responsible 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 any steps taken under section 81.

(2) Subsection (1) does not apply if the disclosure was anonymous.

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

Division 1 – Requirement to investigate

84. Duty to investigate

The Commissioner of Police must investigate every disclosed matter that relates to a police officer that the Ombudsman has referred to the 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 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 Commissioner of Police fails to investigate the matter;
- (b) the person is dissatisfied with the manner in which the Commissioner of Police is carrying out an investigation of the matter;

- (c) the person is dissatisfied with the steps taken by the Commissioner of Police after the investigation of the matter; or
- (d) the 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 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 Commissioner of Police was to investigate or has commenced investigating, the Commissioner 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 Ombudsman may do

- (1) This section applies if –
 - (a) an investigation by the Commissioner of Police is taken over by the Ombudsman under section 84; or
 - (b) a request is made under section 85.
- (2) The Ombudsman may –
 - (a) commence a new investigation;
 - (b) complete the investigation;
 - (c) refer the investigation back to the Commissioner of Police to investigate with recommendations about the future conduct of the investigation; or
 - (d) refer the matter to another public body to investigate.
- (3) In addition, the Ombudsman may inquire into the conduct of the investigation by the Commissioner of Police.
- (4) Part 5, Divisions 3 and 4 apply to an investigation commenced, referred to or taken over by the Ombudsman under this Division.

89. Notice of referral

(1) 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.

(2) Subsection (1) does not apply if the disclosure was anonymous.

Division 2 – Investigation by Commissioner of Police

90. Power to require answers etc. of police officers in certain investigations

(1) In an investigation of a disclosed matter that relates to a police officer under this Part, the Commissioner of Police may direct a police officer to give any relevant information, produce any relevant document or answer any relevant question.

(2) A police officer who does not comply with a direction under subsection (1) commits a breach of discipline under section 76 of the *Police Administration Act*.

(3) Except in proceedings for perjury, for a breach of discipline under section 76 of the *Police Administration Act* 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 a court or a person or body authorised by an Act to take evidence on oath.

91. Progress reports to Ombudsman on investigations

The 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 Commissioner must do

(1) If, on completing an investigation of a disclosed matter under this Part, the Commissioner of Police finds that the conduct that was the subject of the investigation has occurred, the 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 referred to in subsection (1)(a) may include the bringing of disciplinary proceedings against the person responsible for the conduct.

93. Report to Ombudsman

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

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

94. Implementation of recommendations

(1) If the Ombudsman disagrees with the Commissioner of Police about the steps to be taken, the Ombudsman and the Commissioner of Police must refer the matter to the Police Minister.

(2) The Police Minister may give directions as to the taking of any action as a result of the investigation.

(3) The Police Minister may refer to the Director of Public Prosecutions the question of whether or not criminal proceedings should be taken against the police officer responsible for the conduct or another police officer.

95. Report to person making disclosure

(1) Within a reasonable time after completing an investigation of a disclosed matter under this Part, the Commissioner of Police must inform the person who made the disclosure of the findings of the investigation and any steps taken under section 92.

(2) Subsection (1) does not apply if the disclosure was anonymous.

PART 8 – INVESTIGATION OF DISCLOSURES ABOUT MEMBERS OF LEGISLATIVE ASSEMBLY

96. Referral of disclosure to Ombudsman

If a person makes a disclosure to the Speaker in accordance with Part 2, the Speaker may refer the disclosure to the Ombudsman for investigation.

97. Determination of disclosure as public interest disclosure

(1) If the Speaker 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) The Ombudsman must only determine that the disclosure is a public interest disclosure if satisfied the disclosure shows or tends to show that the member of the Legislative Assembly to whom it relates –

- (a) has engaged, is engaging or proposes to engage in improper conduct in that capacity; or
- (b) has taken, is taking or proposes to take detrimental action in contravention of section 20.

98. Notice of determination

The Ombudsman must, within a reasonable time, notify the Speaker of the determination under section 97 in respect of the disclosure.

99. Investigation by Ombudsman

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

100. Investigations to be conducted in accordance with Part 5, Division 2

Part 5, Division 2 (except sections 51 and 60) 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 Speaker.

PART 9 – ANNUAL REPORTS AND OTHER REPORTS

102. Annual report by Ombudsman

The Ombudsman's annual report under section 28 of the *Ombudsman (Northern Territory) Act* must include the following:

- (a) the current guidelines published by the Ombudsman under Part 6;
- (b) the number and kinds of disclosures made to the Ombudsman during the year;
- (c) the number and kinds of determinations the Ombudsman has made during the year as to whether or not disclosures are public interest disclosures;
- (d) the number and kinds of disclosed matters the Ombudsman has investigated during the year;

- (e) the number and kinds of disclosed matters the Ombudsman has referred to each of the following during the year to investigate:
 - (i) under section 43, the Commissioner of Police, the Auditor-General, a prescribed public body or the holder of a prescribed office;
 - (ii) under Part 6, a public body;
 - (iii) under Part 7, the Commissioner of Police;
- (f) the number and kinds of disclosed matters the Ombudsman declined during the year to investigate;
- (g) the number and kinds of disclosed matters a public body referred to the Ombudsman during the year to investigate;
- (h) the number and kinds of disclosures the Speaker referred to the Ombudsman during the year to investigate;
- (i) the number and kinds of investigations of disclosed matters the Ombudsman took over during the year;
- (j) the number of requests made under section 74 or 85 to the Ombudsman during the year to investigate disclosed matters;
- (k) the number and kinds of investigations of disclosed matters for which the Ombudsman made recommendations during the year;
- (l) the recommendations the Ombudsman made during the year in relation to each kind of disclosed matter;
- (m) the recommendations the Ombudsman made during the year in relation to the procedures established by a public body under Part 6;
- (n) the action taken during the year on each of the Ombudsman's recommendation.

103. Other reports by Ombudsman

(1) The Ombudsman may give the Chief Minister a report on any matter arising in relation to a disclosed matter.

(2) The Chief Minister must table a copy of the report in the Legislative Assembly within 3 sitting days after the Chief Minister receives the report.

104. Annual reports by public bodies

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

- (a) the current procedures established by the public body under Part 6;
- (b) the number and kinds of disclosures made to the public body during the year;
- (c) the number of disclosures the public body referred to the Ombudsman during the year for determination as to whether or not they are public interest disclosures;
- (d) the number and kinds of disclosed matters the Ombudsman referred to the public body during the year;
- (e) the number and kinds of disclosed matters the public body referred to the Ombudsman during the year to investigate;
- (f) the number and kinds of investigations of disclosed matters the Ombudsman took over from the public body during the year;
- (g) the number of requests made under section 74 to the Ombudsman during the year to investigate disclosed matters referred to the public body;
- (h) the number and kinds of disclosed matters the public body declined to investigate during the year;
- (i) the number and kinds of disclosed matters that were substantiated on investigation and the action taken on completion of the investigation;
- (j) any recommendations the Ombudsman made during the year that relate to the public body.

PART 10 – GENERAL

105. 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 Speaker of the Legislative Assembly;
- (b) the Ombudsman;
- (c) the Commissioner of Police; or

- (d) a public body.

Penalty: 240 penalty units or imprisonment for 2 years.

106. Protection from liability

- (1) This section applies to a person who is or has been –

- (a) the Ombudsman; or
- (b) a member of the Ombudsman's staff.

(2) The person is not civilly or criminally liable, whether on the ground of want of jurisdiction or on another ground, for an act done or omitted to be done in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

(3) No civil or criminal proceedings may be brought against the person for an act referred to in subsection (1) alleged to have been done or omitted to be done in bad faith without the leave of the Supreme Court.

(4) The Supreme Court may only give leave if satisfied there are substantial grounds for believing the person has acted in bad faith.

- (5) Despite subsections (1), (2) and (3) –

- (a) no order may be made –
 - (i) restraining the Ombudsman from carrying out, or compelling him or her to carry out, any investigation;
 - (ii) restraining the Ombudsman from reporting on, or compelling him or her to report on, the findings of any investigation; or
 - (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 for such an order.

(6) The person may not be called to give evidence in any court or in any legal proceedings or before a Disciplinary Appeal Board under the *Police Administration Act* in respect of any matter coming to his or her knowledge in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

107. 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 –

(a) from the Ombudsman, the 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 in relation to –

(a) proceedings for an offence against this Act; or

(b) a criminal or disciplinary proceeding taken against a police officer as a result of an investigation of a disclosed matter by the Commissioner of Police under Part 7.

(3) This section does not affect the operation of section 90.

108. *Information Act* does not apply

(1) The *Information Act* does not apply to a record in the possession of a public body that is a public sector organisation to the extent the record discloses information –

(a) in relation to a disclosure made under Part 2;

(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.

(2) In subsection (1) –

"public sector organisation" has the same meaning as in the *Information Act*;

"record" has the same meaning as in the *Information Act*.

109. 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.

110. Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing matters –

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
