

## **Whistleblowers Protection Act 2001 (the Act)**

### **Frequently asked questions**

#### **Who is a whistleblower?**

A whistleblower is a person who makes a disclosure about improper conduct by a public body or public official.

#### **What is a disclosure?**

A disclosure is the allegation or report of improper conduct made by the whistleblower.

#### **How can a disclosure be made?**

A disclosure can be made orally, in writing or anonymously.

#### **When can a disclosure be made?**

A disclosure can only be made any time after the Act commences on 1 January 2002. It can be made about conduct that occurred before the Act commenced.

#### **Does a whistleblower have to make a disclosure?**

Whilst it is ethical for a public servant to report improper conduct, the Act does not state that a disclosure must be made by an employee, officer or member of a public body or a member of the public.

The *Police Regulation Act 1958* does require the mandatory reporting of serious misconduct by members of the police force.

#### **Will vexatious or frivolous disclosures be investigated?**

If the Ombudsman determines a protected disclosure to be a "public interest disclosure", section 40 of the Act provides that the Ombudsman may decline to investigate the matter if satisfied that the disclosure is trivial, frivolous or vexatious.

The Act provides a maximum penalty of 240 penalty units (\$24,000) or two years imprisonment or both if a person knowingly provides false information under the Act with the intention that it be acted on as a disclosed matter.

#### **What must public bodies do to comply with the Act?**

Section 68 of the Act requires public bodies to establish procedures to facilitate the making of disclosures, for investigations of disclosed matters and for the protection of persons from reprisals for the making of the disclosure. The procedures must comply with the Act and with the Ombudsman's guidelines.

A public body must make a copy of the procedures available to every employee, member or officer of that public body and members of the public must be able to inspect a copy of the procedures during normal office hours free of charge.

Public bodies must receive and assess disclosures about improper conduct in accordance with the Act, investigate disclosed matters when referred from the Ombudsman and take appropriate action when improper conduct has been found to have occurred. Public bodies must protect whistleblowers from reprisals. The Act also imposes a number of notification and reporting requirements, including the publication of statistics relating to disclosures dealt with in the public body's annual report.

#### **When must public bodies have procedures in place?**

Public bodies must have procedures in place as soon as practicable after the commencement of the Act on 1 January 2002. Where a public body is established after 1 January 2002, it must have procedures in place as soon as practicable after it has been established.

**Does information given by a witness during an investigation become a protected disclosure?**

If information provided by a witness satisfies the criteria set out in Part 2 of the Act, it will become a protected disclosure. Information provided in an interview must be kept confidential. Unauthorised disclosure of such information is an offence under section 22 of the Act.

**What notification do whistleblowers receive about action taken in relation to a disclosure made?**

The whistleblower must be notified of whether the information provided amounts to a public interest disclosure, the findings of any investigation and of action taken where improper conduct has been found to have occurred.

**Where a public body seeks further information from a person who makes a disclosure, is that information protected?**

That information will be protected as forming part of the original disclosure, or where an entirely different allegation is being made, by constituting a new disclosure.

**Can the whistleblower appeal a decision not to investigate a disclosure?**

When a whistleblower makes a disclosure to a public body, the public body will determine whether it is a public interest disclosure. If it is, it will be referred to the Ombudsman for final determination. If the public body finds that disclosure is not a public interest disclosure, the whistleblower is advised of this and may then elect to have the matter referred to the Ombudsman for reconsideration. The whistleblower must request that the matter be referred to the Ombudsman within 28 days of the decision.

If a disclosure is made directly to the Ombudsman, or referred to the Ombudsman by a public body, the Ombudsman must decide whether it is a public interest disclosure. There is no appeal from this decision.

However, a whistleblower may elect to have the complaint dealt with under the *Ombudsman Act* or the *Police Regulation Act* as appropriate. This must be done within 28 days of receiving notice of the determination.

Allegations or complaints that are not determined to be a public interest disclosure may still need to be investigated and responded to by a public body under its normal complaints handling mechanisms.

**Is a person entitled to protection before the Ombudsman makes a determination that a disclosure is a public interest disclosure?**

Where a whistleblower makes a disclosure in accordance with Part 2 of the Act, he or she is entitled to the protection of the Act in relation to the making of that disclosure. The Ombudsman's determination of whether that disclosure is a public interest disclosure does not alter the standing of the disclosure in relation to protection under the Act.

**How long is a whistleblower protected?**

The protections provided to a person who makes a protected disclosure under the Act do not cease. However, where a person makes a protected disclosure, and that disclosure is determined not to be a "public interest disclosure", any further information provided by that person in relation to the subject matter of the disclosure will not attract the protections in the Act. The information, which formed part of the original protected disclosure, will continue to be protected, unless the whistleblower has repeated the allegations to persons not authorised by the Act to receive that disclosure, for example, the media.