

PROTECTED DISCLOSURES BILL

EXPLANATORY NOTE

General Policy Statement

THE purpose of this Bill is to establish a whistle-blower protection scheme that will promote the public interest by facilitating the disclosure and investigation of matters of serious wrongdoing in organisations.

The Bill is intended—

- (a) To reduce impediments to employees of organisations, whether in the public sector or the private sector, disclosing serious wrongdoing; and
- (b) To enhance public confidence in public institutions; and
- (c) To underpin and reinforce the existing statutory and ethical obligations of probity and integrity within the public sector.

The emphasis of the Bill is on the use of existing agencies (no new agency is created) and internal procedures to deal with disclosures and investigations.

The purpose of the Bill is to be achieved—

- (a) By requiring most public sector organisations to adopt internal procedures for receiving and dealing with information about serious wrongdoing in those organisations;
- (b) By requiring the Ombudsmen to provide information and guidance to any employee who notifies the Office of the Ombudsmen that he or she has disclosed, or is considering disclosing, information about serious wrongdoing;
- (c) By protecting the disclosure to an appropriate authority of serious wrongdoing in either the public sector or the private sector;
- (d) By making it clear that where a person who makes a protected disclosure of information claims to have suffered retaliatory action from his or her employer or former employer, any such person will have grounds for a personal grievance under the Employment Contracts Act 1991;
- (e) By providing immunity from civil or criminal proceedings or disciplinary proceedings for any person who makes a protected disclosure of information under the Bill.

Clause by Clause Analysis

Clause 1 relates to the Short Title and the commencement of the Bill. The Bill is to come into force on 1 July 1997.

Clause 2 defines terms used in the Bill. Definitions that are of particular significance are the definitions of the terms “appropriate authority”, “employee”, “organisation”, “public sector organisation”, and “serious wrongdoing”.

Clause 3 provides that the Act binds the Crown.

Clause 4 provides that the purpose of the Bill is to promote the public interest by protecting employees who, in accordance with the Bill, make disclosures of information about serious wrongdoing in or by an organisation.

Protected Disclosures

Clause 5 provides that where an employee of an organisation—

- (a) Has information about serious wrongdoing in or by that organisation; and
 - (b) Believes on reasonable grounds that the information is true or likely to be true; and
 - (c) Wishes to disclose the information so that the serious wrongdoing can be investigated; and
 - (d) Wishes the disclosure of the information to be protected,—
- that employee may disclose the information in the manner provided by the Bill.

Clauses 6 to 9 set out the manner in which most information is to be disclosed under the Bill. The clauses set out the following system:

- (a) In the first instance, an employee must disclose information in the manner provided by internal procedures (if any) established and published in the organisation for receiving and dealing with information about serious wrongdoing (*clause 6*);
- (b) If certain conditions are met (i.e. mainly if there are no internal procedures or recourse to internal procedures is not appropriate), then the employee may disclose information to the head or a deputy head of the organisation (*clause 7*) or to an appropriate authority (*clause 8*). An appropriate authority is defined to include senior members of the Police, the Controller and Auditor-General, the Director of the Serious Fraud Office, an Ombudsman, and other specified persons and bodies;
- (c) If the employee has already disclosed the information (either in accordance with the internal procedures, or to the head or deputy head, or to an appropriate authority), but certain conditions are met (i.e. mainly if the investigation is in some way unsatisfactory), then the employee may disclose the information to a Minister of the Crown or (in the case of a public sector organisation) to the Chief Ombudsman (*clause 9*).

The conditions that must be met before disclosure may be made to the head or a deputy head of the organisation are set out in *clause 7*. They are that—

- (a) The organisation has no internal procedures established and published for receiving and dealing with information about serious wrongdoing; or
- (b) The employee making the disclosure believes on reasonable grounds that the person to whom the wrongdoing should be reported in accordance with the internal procedures is or may be involved in the serious wrongdoing alleged in the disclosure; or
- (c) The employee making the disclosure believes on reasonable grounds that the person to whom the wrongdoing should be reported in accordance with the internal procedures is, by reason of any relationship or association with a person who is or may be involved in the serious wrongdoing alleged in the disclosure, not a person to whom it is appropriate to make the disclosure.

The conditions that must be met before disclosure may be made to an appropriate authority are set out in *clause 8*. They are that the employee making the disclosure believes on reasonable grounds—

- (a) That the head of the organisation is or may be involved in the serious wrongdoing alleged in the disclosure; or
- (b) That immediate reference to an appropriate authority is justified by reason of the urgency of the matter to which the disclosure relates, or some other exceptional circumstance; or
- (c) That there has been no action or recommended action on the matter to which the disclosure relates within 3 months after the date on which the disclosure was made, despite at least 2 written requests by the employee for action on, or information about, the matter.

The conditions that must be met before disclosure may be made to a Minister of the Crown or the Chief Ombudsman are set out in *clause 9*. They are that the employee making the disclosure—

- (a) Has already made substantially the same disclosure in accordance with *clause 6 or clause 7 or clause 8* of the Bill; and
- (b) Believes on reasonable grounds that the person or appropriate authority to whom the disclosure was made—
 - (i) Has decided not to investigate the matter; or
 - (ii) Has decided to investigate the matter but has not made progress with the investigation within 6 months after the date on which the disclosure was made to the person or appropriate authority; or
 - (iii) Has investigated the matter but has not taken any action in respect of the matter nor recommended the taking of action in respect of the matter, as the case may require; and
- (c) Continues to believe on reasonable grounds that the information disclosed is true or likely to be true.

Clause 10 sets out special rules relating to—

- (a) Information relating to an intelligence and security agency; and
- (b) Information relating to the international relations of the Government of New Zealand or intelligence and security matters involving—
 - (i) The Department of the Prime Minister and Cabinet; or
 - (ii) The Ministry of Foreign Affairs and Trade; or
 - (iii) The Ministry of Defence; or
 - (iv) The New Zealand Defence Force.

A different regime applies to disclosure of such information. The disclosure of such information—

- (a) Must be made, in the first instance, in the manner provided by internal procedures established and published in the organisation for receiving and dealing with information about serious wrongdoing, to a person holding an appropriate security clearance and authorised to have access to the information; and
- (b) May be made to the head or a deputy head of the organisation, if the conditions for a disclosure under *clause 7* are met; and
- (c) May be made, if the conditions for a disclosure under *clause 8 or clause 9* are met,—
 - (i) To the Inspector-General of Intelligence and Security, where the information relates to an intelligence and security agency; and
 - (ii) To the Chief Ombudsman, where the information relates to the international relations of the Government of New Zealand or intelligence and security matters involving the relevant organisations,— and to no other person.

Clause 11 provides that, not later than 6 months after the commencement of the Act, every public sector organisation must have in operation appropriate internal procedures for receiving and dealing with information about serious wrongdoing in the organisation.

Those internal procedures must comply with the principles of natural justice.

Information about the existence of those internal procedures, and adequate information on how to use those procedures, must be widely published within the public sector organisation and must be republished at regular intervals.

The clause does not apply to—

- (a) A state enterprise within the meaning of the State-Owned Enterprises Act 1986;
- (b) A local authority trading enterprise within the meaning of section 594B (1) of the Local Government Act 1974.

Clause 12 provides that where a person notifies the Office of the Ombudsmen, orally or in writing, that he or she has disclosed, or is considering disclosing, information under the Bill, an Ombudsman is required to provide information and guidance to that person on certain matters.

Where the information relates to an intelligence and security agency, notification must be given to the Inspector-General of Intelligence and Security who shall perform the functions of an Ombudsman under this clause.

Where the information relates to the international relations of the Government of New Zealand or intelligence and security matters involving—

- (a) The Department of the Prime Minister and Cabinet; or
- (b) The Ministry of Foreign Affairs and Trade; or
- (c) The Ministry of Defence; or
- (d) The New Zealand Defence Force,—

notification must be given to the Chief Ombudsman.

Clause 13 provides that where an appropriate authority to whom a protected disclosure of information is made considers, after consultation with another appropriate authority, that the information disclosed can be more suitably and conveniently investigated by that other appropriate authority, the appropriate authority to which the information is disclosed may refer that information to that other appropriate authority.

The appropriate authority to which the information has been referred is required to give the person by whom the protected disclosure of information was made notification that the information disclosed has been so referred. That notification must be given promptly.

Protections

Clause 14 provides that where an employee who makes a protected disclosure of information under the Bill claims to have suffered retaliatory action from his or her employer or former employer, that employee,—

- (a) If that retaliatory action consists of or includes dismissal, may have a personal grievance, for the purposes of section 27 (1) (a) of the Employment Contracts Act 1991, because of a claim of unjustifiable dismissal, and Part III of that Act shall apply accordingly; and
- (b) If that retaliatory action consists of action other than dismissal or includes an action in addition to dismissal, may have a personal grievance, for the purposes of section 27 (1) (b) of the Employment Contracts Act 1991, because of a claim described in section 27 (1) (b) of that Act, and Part III of that Act shall apply accordingly.

The clause applies only to employees within the meaning of the Employment Contracts Act 1991, and does not apply in respect of a disclosure of information that an employee has chosen to make otherwise than in accordance with the Bill.

Clause 15 provides that no person who—

- (a) Makes a protected disclosure of information; or
- (b) Refers a protected disclosure of information to an appropriate authority for investigation—

is liable to any civil or criminal proceeding or to any disciplinary proceeding by reason of having made or referred that disclosure of information.

This provision is to apply notwithstanding any prohibition or restriction on the disclosure of information under any enactment, rule of law, contract, oath, or practice.

Clause 16 provides that every person to whom a protected disclosure is made or referred must use his or her best endeavours not to disclose information that might identify the person who made the protected disclosure unless—

- (a) That person consents in writing to the disclosure of that information; or
- (b) The person who has acquired knowledge of the protected disclosure reasonably believes that disclosure of identifying information—
 - (i) Is essential to the effective investigation of the allegations in the protected disclosure; or
 - (ii) Is essential to prevent serious risk to public health or public safety or the environment; or
 - (iii) Is essential having regard to the principles of natural justice.

Miscellaneous Provisions

Clause 17 provides that the protections conferred by the Bill and by *section 66 (1) (a)* of the Human Rights Act 1993 do not apply where the person who makes a disclosure of information makes an allegation known to that person to be false or otherwise acts in bad faith.

Clause 18 provides that the Bill does not limit any protection, privilege, immunity, or defence, whether statutory or otherwise, relating to the disclosure of information.

Clause 19 provides that the functions and powers of Ombudsmen under the Ombudsmen Act 1975 are not limited by the Bill. However, the Chief Ombudsman is not bound to investigate a disclosure made under *clause 9* (or its equivalent under *clause 10 (2) (c)*).

Clause 20 provides that the Minister of State Services must, not sooner than 3 years after the commencement of the Act, cause a report to be prepared on—

- (a) The operation of the Act since its commencement; and
- (b) Whether any amendments to the scope and contents of the Act are necessary or desirable, including an amendment to require further periodic reports to the House of Representatives on the operation of the Act.

The report is required to be laid before the House of Representatives not later than 4 years after the commencement of the Act.

Amendment to Human Rights Act 1993

Clause 21 amends *section 66 (1)* of the Human Rights Act 1993 (which deals with victimisation). It is to be unlawful for any person to treat or to threaten to treat any other person less favourably than he or she would treat other persons in

the same or substantially similar circumstances on the ground that that person, or any relative or associate of that person,—

- (a) Intends to make use of his or her rights under the Human Rights Act 1998 or to make a disclosure under the Bill; or
 - (b) Has made use of his or her rights, or promoted the rights of some other person, under the Human Rights Act 1998, or has made a disclosure, or has encouraged disclosure by some other person, under the Bill; or
 - (c) Has given information or evidence in relation to any complaint, investigation, or proceeding arising out of a disclosure under the Bill; or
 - (d) Has declined to do an act that would contravene the Human Rights Act 1998; or
 - (e) Has otherwise done anything under or by reference to the Human Rights Act 1998.
-

Hon. Paul East

PROTECTED DISCLOSURES

ANALYSIS

Title	12. Information and guidance for employees making disclosures
1. Short Title and commencement	13. Reference from one appropriate authority to another of information disclosed
2. Interpretation	
3. Act to bind the Crown	
4. Purpose of Act	
<i>Protected Disclosures</i>	<i>Protections</i>
5. Disclosures to which Act applies	14. Personal grievance
6. Disclosure must be made in accordance with internal procedures	15. Immunity from civil and criminal proceedings
7. Disclosure may be made to head of organisation in certain circumstances	16. Confidentiality
8. Disclosure may be made to appropriate authority in certain circumstances	<i>Miscellaneous Provisions</i>
9. Disclosure may be made to Minister of Crown or Chief Ombudsman in certain circumstances	17. False allegations
10. Special rules on disclosures relating to intelligence and security and international relations	18. Other protections preserved
11. Public sector organisations to establish internal procedures	19. Provisions relating to Ombudsmen
	20. Review of operation of Act
	<i>Amendment to Human Rights Act 1993</i>
	21. Victimisation

A BILL INTITULED

An Act to promote the public interest by protecting employees who make certain disclosures of information

5 BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Protected Disclosures Act 1996.

(2) This Act shall come into force on the 1st day of July 1997.

10 **2. Interpretation**—In this Act, unless the context otherwise requires,—

“Appropriate authority”, without limiting the meaning of that term,—

- (a) Includes—
- (i) The Commissioner of Police, a Deputy Commissioner of Police, and a senior member of the Police: 5
 - (ii) The Controller and Auditor-General holding office under the Public Finance Act 1977: 5
 - (iii) The Director of the Serious Fraud Office under the Serious Fraud Office Act 1990, and any designated member of that Office within the meaning of that Act: 10
 - (iv) The Inspector-General of Intelligence and Security holding office under section 5 of the Inspector-General of Intelligence and Security Act 1996: 10
 - (v) An Ombudsman: 15
 - (vi) The Police Complaints Authority established by section 4 of the Police Complaints Authority Act 1988, and the deputy to the Police Complaints Authority: 15
 - (vii) The Solicitor-General: 20
 - (viii) The State Services Commissioner appointed under section 3 of the State Sector Act 1988, and the Deputy State Services Commissioner; and 20
- (b) Includes the head of every public sector organisation, whether or not mentioned in paragraph (a) of this definition; and 25
- (c) Includes a private sector body which comprises members of a particular profession or calling and which has power to discipline its members; but 30
- (d) Does not include—
- (i) A Minister of the Crown; or
 - (ii) A member of Parliament:
- “Employee”, in relation to an organisation, includes— 35
- (a) A former employee: 35
 - (b) A homeworker within the meaning of section 2 of the Employment Contracts Act 1991: 35
 - (c) A person seconded to the organisation: 35
 - (d) An independent contractor: 35
 - (e) A person concerned in the management of the organisation: 40
 - (f) In relation to the New Zealand Defence Force, a member of the Armed Forces: 40
- “Environment” has the meaning given to it by section 2 of the Environment Act 1986: 45

“Intelligence and security agency” has the meaning given to it by section 2 (1) of the Inspector-General of Intelligence and Security Act 1996:

5 “Maladministration” means an act, omission, or course of conduct that is oppressive, improperly discriminatory, or grossly negligent or that constitutes gross mismanagement:

10 “Ombudsman” means an Ombudsman holding office under the Ombudsmen Act 1975; and includes—

(a) Any person holding office under an Ombudsman to whom any of the powers of an Ombudsman have been delegated under section 28 of that Act; and

15 (b) Any person whom an Ombudsman has appointed to perform an Ombudsman’s functions under this Act:

20 “Organisation” means a body of persons, whether corporate or unincorporate, and whether in the public sector or the private sector; and includes a body of persons comprising one employer and one or more employees:

“Protected”, in relation to a disclosure of information, means a disclosure that is made in accordance with this Act:

25 “Public funds or public resources” includes—

(a) Public money and public stores within the meaning of the Public Finance Act 1977:

30 (b) Money and stores of a Government agency, or of a local authority, within the meaning of the Public Finance Act 1977:

(c) Money and stores of—

(i) A Crown entity within the meaning of the Public Finance Act 1989:

35 (ii) A State enterprise within the meaning of the State-Owned Enterprises Act 1986:

(iii) A local authority trading enterprise within the meaning of section 594B (1) of the Local Government Act 1974:

40 (iv) An airport company within the meaning of the Airport Authorities Act 1966:

(v) A port company within the meaning of the Port Companies Act 1988:

45 (vi) Any energy company within the meaning of the Energy Companies Act 1992, including any company or other entity

- that is deemed, by section 78 or section 81 of that Act, to be an energy company for the purposes of sections 36, 37, 39 to 46, 85, 87, and 88 of that Act:
- (vii) Any energy supply operation to which section OC 2 of the Income Tax Act 1994 applies: 5
 - (viii) The New Zealand Local Government Association Limited:
 - (ix) Any company or any other organisation (as defined in section 594B (2) of the Local Government Act 1974) of which the New Zealand Local Government Association Limited has control directly or indirectly by any means whatsoever: 10
- “Public official” means a person who—
- (a) Is an employee of a public sector organisation; or
 - (b) Is concerned in the management of a public sector organisation: 20
- “Public sector organisation” means—
- (a) An organisation named or specified in the First Schedule to the Ombudsmen Act 1975:
 - (b) An organisation named in the First Schedule to the Official Information Act 1982: 25
 - (c) A local authority or public body named or specified in the First Schedule to the Local Government Official Information and Meetings Act 1987:
 - (d) The Office of the Clerk of the House of Representatives: 30
 - (e) The Parliamentary Service:
 - (f) An intelligence and security agency:
- “Serious wrongdoing” means—
- (a) The unlawful, corrupt, or irregular use of public funds or public resources: 35
 - (b) Any other act, omission, or course of conduct that constitutes—
 - (i) An offence; or
 - (ii) Maladministration by a public official; or 40
 - (iii) A serious risk to public health, or public safety, or the environment; or
 - (iv) A serious risk to the maintenance of law, including the prevention, investigation,

and detection of offences, and the right to a fair trial,—
whether the wrongdoing occurs before or after the commencement of this Act.

5 **3. Act to bind the Crown**—This Act binds the Crown.

4. Purpose of Act—The purpose of this Act is to promote the public interest by protecting employees who, in accordance with this Act, make disclosures of information about serious wrongdoing in or by an organisation.

10 *Protected Disclosures*

5. Disclosures to which Act applies—Where an employee of an organisation—

- (a) Has information about serious wrongdoing in or by that organisation; and
 - 15 (b) Believes on reasonable grounds that the information is true or likely to be true; and
 - (c) Wishes to disclose the information so that the serious wrongdoing can be investigated; and
 - (d) Wishes the disclosure of the information to be
 - 20 protected,—
- that employee may disclose the information in the manner provided by this Act.

6. Disclosure must be made in accordance with internal procedures—Subject to sections 7 to 10 of this Act, an
25 employee must disclose information in the manner provided by internal procedures established and published in the organisation, or the relevant part of the organisation, for receiving and dealing with information about serious wrongdoing.

30 **7. Disclosure may be made to head of organisation in certain circumstances**—Subject to section 10 of this Act, a disclosure of information may be made to the head or a deputy head of the organisation, if—

- 35 (a) The organisation has no internal procedures established and published for receiving and dealing with information about serious wrongdoing; or
- (b) The employee making the disclosure believes on reasonable grounds that the person to whom the wrongdoing should be reported in accordance with

the internal procedures is or may be involved in the serious wrongdoing alleged in the disclosure; or

- (c) The employee making the disclosure believes on reasonable grounds that the person to whom the wrongdoing should be reported in accordance with the internal procedures is, by reason of any relationship or association with a person who is or may be involved in the serious wrongdoing alleged in the disclosure, not a person to whom it is appropriate to make the disclosure.

8. Disclosure may be made to appropriate authority in certain circumstances—Subject to section 10 of this Act, a disclosure of information may be made to an appropriate authority, if the employee making the disclosure believes on reasonable grounds—

- (a) That the head of the organisation is or may be involved in the serious wrongdoing alleged in the disclosure; or
- (b) That immediate reference to an appropriate authority is justified by reason of the urgency of the matter to which the disclosure relates, or some other exceptional circumstance; or
- (c) That there has been no action or recommended action on the matter to which the disclosure relates within 3 months after the date on which the disclosure was made, despite at least 2 written requests by the employee for action on, or information about, the matter.

9. Disclosure may be made to Minister of Crown or Chief Ombudsman in certain circumstances—(1) Subject to section 10 of this Act, a disclosure of information may be made to a Minister of the Crown or the Chief Ombudsman, if the employee making the disclosure—

- (a) Has already made substantially the same disclosure in accordance with section 6 or section 7 or section 8 of this Act; and
- (b) Believes on reasonable grounds that the person or appropriate authority to whom the disclosure was made—
- (i) Has decided not to investigate the matter; or
- (ii) Has decided to investigate the matter but has not made progress with the investigation within 6 months after the date on which the disclosure was made to the person or appropriate authority; or

- (iii) Has investigated the matter but has not taken any action in respect of the matter nor recommended the taking of action in respect of the matter, as the case may require; and
 - 5 (c) Continues to believe on reasonable grounds that the information disclosed is true or likely to be true.
- (2) A disclosure under this section may be made to the Chief Ombudsman only if—
- 10 (a) It is in respect of a public sector organisation; and
 - (b) It has not already been made to an Ombudsman under **section 8** of this Act.

- 10. Special rules on disclosures relating to intelligence and security and international relations—**(1) Except as provided in this section, **sections 6 to 9** of this Act do not apply
- 15 to—
- (a) Information relating to an intelligence and security agency; and
 - (b) Information relating to the international relations of the Government of New Zealand or intelligence and security matters involving—
 - 20 (i) The Department of the Prime Minister and Cabinet; or
 - (ii) The Ministry of Foreign Affairs and Trade; or
 - (iii) The Ministry of Defence; or
 - 25 (iv) The New Zealand Defence Force.
 - (2) The disclosure of such information—
 - 30 (a) Must be made in the manner provided by internal procedures established and published in the organisation, or the relevant part of the organisation, for receiving and dealing with information about serious wrongdoing, to a person holding an appropriate security clearance and authorised to have access to the information; and
 - 35 (b) May be made to the head or a deputy head of the organisation, if the conditions for a disclosure under **section 7** of this Act are met; and
 - (c) May be made, if the conditions for a disclosure under **section 8** or **section 9** of this Act are met,—
 - 40 (i) To the Inspector-General of Intelligence and Security, where the information relates to an intelligence and security agency; and
 - (ii) To the Chief Ombudsman, where the information relates to the international relations of the Government of New Zealand or intelligence and

security matters involving an organisation referred to in subsection (1) (b) of this section,—
and to no other person.

(3) Neither the Inspector-General of Intelligence and Security nor the Chief Ombudsman shall disclose information received under this section except in accordance with the provisions of the Inspector-General of Intelligence and Security Act 1996 or the Ombudsmen Act 1975, as the case may be.

11. Public sector organisations to establish internal procedures—(1) Subject to subsection (4) of this section, not later than 6 months after the commencement of this Act, every public sector organisation must have in operation appropriate internal procedures for receiving and dealing with information about serious wrongdoing in the organisation.

(2) The internal procedures referred to in subsection (1) of this section must comply with the principles of natural justice.

(3) Information about the existence of the internal procedures referred to in subsection (1) of this section, and adequate information on how to use those procedures, must be widely published within the organisation and must be republished at regular intervals.

(4) This section does not apply to—

(a) A State enterprise within the meaning of the State-Owned Enterprises Act 1986:

(b) A local authority trading enterprise within the meaning of section 594B (1) of the Local Government Act 1974.

12. Information and guidance for employees making disclosures—(1) Subject to subsections (2) and (3) of this section, where an employee notifies the Office of the Ombudsmen, orally or in writing, that he or she has disclosed, or is considering the disclosure of, information under this Act, an Ombudsman must provide information and guidance to that employee on the following matters:

(a) The kinds of disclosures that are protected under this Act:

(b) The manner in which, and the persons to whom, information may be disclosed under this Act:

(c) The broad role of each authority referred to subparagraphs (i) to (viii) of paragraph (a) of the definition of the term “appropriate authority” in section 2 of this Act:

(d) The protections and remedies available under this Act and the Human Rights Act 1993 if the disclosure of

information in accordance with this Act leads to victimisation of the person making the disclosure:

(e) How particular information disclosed to an appropriate authority may be referred to another appropriate authority under this Act.

5

(2) Where the information referred to in **subsection (1)** of this section relates to an intelligence and security agency, notification must be given to the Inspector-General of Intelligence and Security (and to no other person) who shall perform the functions of an Ombudsman under **subsection (1)** of this section.

10

(3) Where the information referred to in **subsection (1)** of this section relates to the international relations of the Government of New Zealand or intelligence and security matters involving the organisations listed in **section 10 (1) (b)** of this Act, notification must be given to the Chief Ombudsman (and to no other person).

15

13. Reference from one appropriate authority to another of information disclosed—(1) Where an appropriate authority to whom a protected disclosure of information is made considers, after consultation with another appropriate authority, that the information disclosed can be more suitably and conveniently investigated by that other appropriate authority, the appropriate authority to whom the information is disclosed may refer that information to that other appropriate authority.

20

25

(2) Where, under **subsection (1)** of this section, information is referred from one appropriate authority to another, the appropriate authority to whom the information has been referred must promptly notify the person by whom the protected disclosure of information was made that the information disclosed has been so referred.

30

(3) A protected disclosure of information does not, by reason of the information being referred under **subsection (1)** of this section, cease to be a protected disclosure of information.

35

(4) Nothing in this section prevents a protected disclosure of information being transferred from one appropriate authority to another on more than one occasion.

Protections

14. Personal grievance—(1) Where an employee who makes a protected disclosure of information under this Act claims to have suffered retaliatory action from his or her employer or former employer, that employee,—

40

- (a) If that retaliatory action consists of or includes dismissal, may have a personal grievance, for the purposes of section 27 (1) (a) of the Employment Contracts Act 1991, because of a claim of unjustifiable dismissal, and Part III of that Act shall apply accordingly; and 5
- (b) If that retaliatory action consists of action other than dismissal or includes an action in addition to dismissal, may have a personal grievance, for the purposes of section 27 (1) (b) of the Employment Contracts Act 1991, because of a claim described in section 27 (1) (b) of that Act, and Part III of that Act shall apply accordingly. 10
- (2) This section applies only to employees within the meaning of the Employment Contracts Act 1991.
- (3) This section does not apply in respect of a disclosure of information that an employee has chosen to make otherwise than in accordance with this Act. 15

15. Immunity from civil and criminal proceedings—

- (1) No person who—
- (a) Makes a protected disclosure of information; or 20
- (b) Refers a protected disclosure of information to an appropriate authority for investigation—
- is liable to any civil or criminal proceeding or to a disciplinary proceeding by reason of having made or referred that disclosure of information. 25
- (2) **Subsection (1)** of this section applies notwithstanding any prohibition of or restriction on the disclosure of information under any enactment, rule of law, contract, oath, or practice.

16. Confidentiality—(1) Every person to whom a protected disclosure is made or referred must use his or her best endeavours not to disclose information that might identify the person who made the protected disclosure unless— 30

- (a) That person consents in writing to the disclosure of that information; or
- (b) The person who has acquired knowledge of the protected disclosure reasonably believes that disclosure of identifying information— 35
- (i) Is essential to the effective investigation of the allegations in the protected disclosure; or
- (ii) Is essential to prevent serious risk to public health or public safety or the environment; or 40
- (iii) Is essential having regard to the principles of natural justice.

(2) A request for information under the Official Information Act 1982 (other than one made by a member of the Police for the purpose of investigating an offence) may be refused, as contrary to this Act, if it might identify a person who has made a protected disclosure.

Miscellaneous Provisions

17. False allegations—The protections conferred by this Act and by section 66 (1) (a) of the Human Rights Act 1993 do not apply where the person who makes a disclosure of information makes an allegation known to that person to be false or otherwise acts in bad faith.

18. Other protections preserved—This Act does not limit any protection, privilege, immunity, or defence, whether statutory or otherwise, relating to the disclosure of information.

19. Provisions relating to Ombudsmen—(1) The functions and powers of Ombudsmen under the Ombudsmen Act 1975 are not limited by this Act.

(2) The Chief Ombudsman has the same powers in relation to investigating a disclosure of information made under—

(a) Section 9 of this Act; or

(b) Section 10 (2) (c) of this Act where the conditions for a disclosure under section 9 are met,—

as Ombudsmen have in relation to a complaint under the Ombudsmen Act 1975, but is not bound to investigate the disclosure of information.

20. Review of operation of Act—(1) The Minister of State Services must, not sooner than 3 years after the commencement of this Act, cause a report to be prepared on—

(a) The operation of this Act since its commencement; and

(b) Whether any amendments to the scope and contents of this Act are necessary or desirable, including an amendment to require further periodic reports to the House of Representatives on the operation of the Act.

(2) The Minister of State Services must, not later than 4 years after the commencement of this Act, lay a copy of the report before the House of Representatives.

Amendment to Human Rights Act 1993

21. Victimisation—Section 66 (1) of the Human Rights Act 1993 is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) On the ground that that person, or any relative or 5
associate of that person,—

“(i) Intends to make use of his or her rights under this Act or to make a disclosure under the Protected Disclosures Act 1996; or

“(ii) Has made use of his or her rights, or 10
promoted the rights of some other person, under this Act, or has made a disclosure, or has encouraged disclosure by some other person, under the Protected Disclosures Act 1996; or

“(iii) Has given information or evidence in 15
relation to any complaint, investigation, or proceeding under this Act or arising out of a disclosure under the Protected Disclosures Act 1996; or

“(iv) Has declined to do an act that would 20
contravene this Act; or

“(v) Has otherwise done anything under or by reference to this Act; or”.