

Version No. 003**Whistleblowers Protection Act 2001****Act No. 36/2001**

Version incorporating amendments as at 2 June 2004

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purposes	1
2. Commencement	1
3. Definitions	2
4. Exclusion of certain persons and bodies	7
PART 2—DISCLOSURES OF IMPROPER CONDUCT	9
5. Who can make a disclosure about improper conduct?	9
6. To whom can a disclosure be made?	9
7. Can a person make an anonymous disclosure?	10
8. Is it necessary to know who has engaged in the conduct about which the disclosure is made?	10
9. Can a disclosure be about past conduct?	10
10. Privileges of Parliament and legal professional privilege not affected	11
PART 3—PROTECTION OF WHISTLEBLOWERS	12
11. Application of Part	12
12. What is a protected disclosure?	12
13. Certain further information also protected	12
14. Immunity from liability	12
15. Confidentiality provisions do not apply	13
16. Protection from defamation action	13
17. Liability for own conduct	13
18. Protection from reprisal	13
19. Proceedings for damages for reprisal	14
20. Application for injunction or order	15
21. Injunction or order	15
22. Offence to reveal confidential information	15
23. Certain further disclosures and further information related to disclosures are not protected disclosures	17

<i>Section</i>	<i>Page</i>
PART 4—DETERMINATION OF PUBLIC INTEREST DISCLOSURES	19
Division 1—Determination by Ombudsman of public interest disclosures	19
24. Determination of disclosure as public interest disclosure	19
25. Notice of determination	19
26. Certain complaints under the Police Regulation Act 1958 to be investigated as public interest disclosures	20
27. Notice of alternative procedure	20
Division 2—Disclosures made to public bodies	21
28. Consideration whether a disclosure is a public interest disclosure	21
29. What happens if the public body concludes that a disclosure is a public interest disclosure?	22
30. What happens if the public body concludes that a disclosure is not a public interest disclosure?	22
31. Request for referral to Ombudsman	23
32. Determination by Ombudsman	23
Division 3—Disclosures in relation to members of the police force	23
33. Consideration whether a disclosure is a public interest disclosure	23
34. What happens if it is concluded that a disclosure is a public interest disclosure?	24
35. What happens if it is concluded that a disclosure is not a public interest disclosure?	24
36. Request for referral to Ombudsman	25
37. Determination by Ombudsman	25
PART 5—INVESTIGATION OF PUBLIC INTEREST DISCLOSURES BY THE OMBUDSMAN	26
Division 1—Functions of Ombudsman	26
38. What are the Ombudsman's functions under the Act?	26
Division 2—Requirement to investigate	27
39. Duty to investigate	27
40. Which matters do not have to be investigated?	27
41. Referral of matters for investigation otherwise than under this Act	27
42. Referral of public interest disclosures to relevant public body for investigation	28
43. Referral of certain public interest disclosures to Police Ombudsman for investigation	28

<i>Section</i>	<i>Page</i>
44. Referral of certain public interest disclosures to Chief Commissioner of Police for investigation	29
45. What information may the Ombudsman provide?	29
46. Notice of referral	29
Division 3—Investigation by Ombudsman	29
47. Procedures for investigation	29
48. Secondment of members of the police force for certain investigations	30
49. Secondment of others for certain investigations	30
50. Notice of the investigation	31
51. Investigation to be private	32
52. A hearing is not required	32
53. Legal representation	32
54. How is evidence to be taken?	32
55. Power to require answers etc. of members of the police force in certain investigations	33
56. Can privileged or confidential information be disclosed to the Ombudsman?	33
57. Deliberations of Ministers and Parliamentary committees not to be disclosed	34
58. Power to enter premises	35
59. Consultation and comment	35
60. Obstruction	36
61. Opportunity to be heard before adverse report	37
Division 3A—Further Provisions for Investigations by Police Ombudsman	37
61A. Application of Division	37
61B. Evidence in Police Ombudsman investigations	37
61C. Powers with search warrant	39
61D. Procedure for executing warrant	40
61E. Copies or receipts to be given	41
61F. Retention and return of documents and other things	42
Division 4—Action on completion of investigation	42
62. Report on investigation by Police Ombudsman to Ombudsman	42
63. Report on investigation	42
64. Notice of implementation of recommendation	43
65. Implementation of recommendations in relation to members of the police force	44
66. Report to Parliament	44
67. Person who made disclosure to be informed	45

<i>Section</i>	<i>Page</i>
PART 6—INVESTIGATION OF PUBLIC INTEREST DISCLOSURES BY PUBLIC BODIES	46
Division 1—Establishment of procedures	46
68. Public body to establish procedures	46
69. Ombudsman's guidelines	46
70. Availability of procedures	47
71. Review of procedures	47
Division 2—Requirement to investigate	48
72. Duty to investigate	48
73. Referral to Ombudsman by public body	48
74. Request to Ombudsman by person making disclosure	48
75. Ombudsman may take over an investigation	48
76. Provision of information to Ombudsman	49
77. What can the Ombudsman do?	49
78. Notice of referral	50
Division 3—Investigation by public body	50
79. Investigation to be in accordance with procedures	50
80. Information about progress of investigation	50
Division 4—Action on investigation	51
81. What action must the public body take?	51
82. Report on investigation	51
83. Report to person making disclosure	52
PART 7—INVESTIGATION OF PUBLIC INTEREST DISCLOSURES REFERRED TO CHIEF COMMISSIONER OF POLICE	53
Division 1—Requirement to investigate	53
84. Duty to investigate	53
85. Request to Ombudsman by person making disclosure	53
86. Ombudsman may take over an investigation	53
87. Provision of information to Ombudsman	54
88. What can the Ombudsman do?	54
89. Notice of referral	55
Division 2—Investigation by Chief Commissioner of Police	55
90. Power to require answers etc. of members of the police force in certain investigations	55
91. Progress reports to Ombudsman on investigations	55

<i>Section</i>	<i>Page</i>
Division 3—Action on investigation	56
92. What action must the Chief Commissioner of Police take?	56
93. Report to Ombudsman	56
94. Implementation of recommendations	56
95. Report to person making disclosure	57
 PART 8—INVESTIGATION OF DISCLOSURES ABOUT MEMBERS OF PARLIAMENT	 58
96. Referral of disclosure to Ombudsman	58
97. Determination of disclosure as public interest disclosure	58
98. Notice of determination	58
99. Investigation by Ombudsman	59
100. Investigations to be conducted in accordance with Division 3 of Part 5	59
101. Report on investigation	59
 PART 9—ANNUAL REPORTS AND OTHER REPORTS	 60
102. Annual report by Ombudsman	60
103. Other reports by Ombudsman	61
104. Annual reports by public body	62
105. Reports by councils in relation to disclosures relating to officers and employees of councils	63
 PART 10—GENERAL	 64
106. Offence to make false disclosure	64
107. Protection of Ombudsman and officers of Ombudsman	64
108. Evidence not admissible	66
109. Exemption from Freedom of Information Act 1982	66
110. Supreme Court—limitation of jurisdiction	67
111. Service on a person making a disclosure	67
111A. Transitional provision on creation of office of Police Ombudsman	68
112. Regulations	68
 PART 11—AMENDMENT OF RELATED ACTS	 69
Division 1—Amendment of Ombudsman Act 1973	69
113. Protection of the Ombudsman and the officers of the Ombudsman	69
114. New section 29A inserted	70
29A. Exemption from Freedom of Information Act 1982	70
115. New section 30A inserted	70
30A. Supreme Court—limitation of jurisdiction	70

<i>Section</i>	<i>Page</i>
Division 2—Amendment of Police Regulation Act 1958	71
116. Breaches of discipline	71
117. Making of complaints	71
118. New section 86LA inserted	72
86LA. Whistleblowers Protection Act 2001 applies to certain complaints	72
119. New section 86TA inserted	73
86TA. Exemption from Freedom of Information Act 1982	73
<hr style="border-top: 3px double #000;"/>	
ENDNOTES	74
1. General Information	74
2. Table of Amendments	75
3. Explanatory Details	76

Version No. 003

Whistleblowers Protection Act 2001

Act No. 36/2001

Version incorporating amendments as at 2 June 2004

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The purposes of this Act are—

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

2. Commencement

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 1—Preliminary

s. 3

3. Definitions

(1) In this Act—

"corrupt conduct" means—

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

"councillor" means a councillor of a municipal council;

* * * * *

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

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

Part 1—Preliminary

s. 3

"detrimental action" includes—

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

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

"improper conduct" means—

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

that would, if proved, constitute—

- (e) a criminal offence; or
- (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;

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 1—Preliminary

s. 3

S. 3(1) def. of
"Police
Ombudsman"
inserted by
No. 32/2004
s. 21(1)(b).

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

"Police Ombudsman" means the Police Ombudsman under section 6A of the **Ombudsman Act 1973**;

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

"public body" means—

- (a) an Agency within the meaning of the **Public Sector Management and Employment Act 1998**;
- (b) the chief executive officer of a municipal council, but only in relation to an officer or employee of that council;
- (c) the Chief Commissioner of Police, but only in relation to a person employed in that office who is not a member of the police force;
- (d) a body, whether corporate or unincorporate, that is established by or under an Act for a public purpose;
- (e) a body whose members, or a majority of whose members, are appointed by the Governor in Council or a Minister;
- (f) a company all the shares or a majority of the shares in which are held by the State or another public body;

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 1—Preliminary

s. 3

-
- (g) a body, whether corporate or unincorporate—
- (i) supported directly or indirectly by government funds or other assistance; or
 - (ii) over which the State is in a position to exercise control—
- that is prescribed for the purposes of this Act;
- (h) a university;
- (i) a TAFE college within the meaning of the **Vocational Education and Training Act 1990**;
- (j) a public hospital within the meaning of the **Health Services Act 1988**;
- (k) a State funded residential care service within the meaning of the **Health Services Act 1988**;
- (l) a contractor, or a sub-contractor, within the meaning of Part 3A of the **Health Services Act 1988**, but only in its capacity as a provider of health services to public hospital patients in accordance with an agreement under section 69B(1) of that Act;
- (m) a contractor within the meaning of the **Corrections Act 1986** or a sub-contractor of that contractor, but only in relation to a function or duty or the exercise of a power conferred on it by or under that Act—

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 1—Preliminary

s. 3

"public officer" means—

- (a) a member of Parliament;
- (b) a councillor;
- (c) a member, officer or employee of a public body other than a university;
- (d) a member of the governing body of a public body other than a university;
- (e) an officer or employee of a municipal council;
- (f) an officer or employee or a member of the academic staff of a university, or a member of the governing authority of a university;
- (g) a member of the police force;
- (h) a protective services officer appointed under Part VIA of the **Police Regulation Act 1958**;
- (i) a person who is employed in the office of the Chief Commissioner of Police and who is not a member of the police force;
- (j) the holder of an office established by or under an Act to which the right to appoint is vested in the Governor in Council or a Minister;
- (k) a member of the teaching service within the meaning of the **Teaching Service Act 1981**—

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 1—Preliminary

s. 4

"relevant Minister" means—

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

"university" means an institution listed in Schedule 1 to the **Tertiary Education Act 1993** that is a body politic and is governed by a council, some of the members of which are appointed by the Governor in Council or a Minister.

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

4. Exclusion of certain persons and bodies

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 1—Preliminary

s. 4

S. 4(2)(ia)
inserted by
No. 32/2004
s. 21(2).

-
- (2) The following persons are not public officers for the purposes of this Act—
- (a) a judge of the Supreme Court;
 - (b) a judge of the County Court;
 - (c) a master of the Supreme Court;
 - (d) a master of the County Court;
 - (e) a magistrate;
 - (f) a member of the Victorian Civil and Administrative Tribunal;
 - (g) the Director of Public Prosecutions;
 - (h) the Auditor-General;
 - (i) the Ombudsman;
 - (ia) the Police Ombudsman;

 - (j) the Electoral Commissioner;
 - (k) an officer of the Parliament or an employee within the meaning of the **Parliamentary Officers Act 1975**;
 - (l) a judicial employee within the meaning of section 51 of the **Public Sector Management and Employment Act 1998**.
-

PART 2—DISCLOSURES OF IMPROPER CONDUCT

5. Who can make a disclosure about improper conduct?

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

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

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

6. To whom can a disclosure be made?

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 2—Disclosures of Improper Conduct

s. 7

S. 6(4)
amended by
No. 32/2004
s. 22.

S. 6(5)(b)
amended by
No. 32/2004
s. 22.

- (4) A disclosure that relates to the Chief Commissioner of Police must be made to the Ombudsman or the Police Ombudsman.
- (5) A disclosure that relates to any other member of the police force may be made to—
 - (a) the Ombudsman; or
 - (b) the Police Ombudsman; or
 - (c) the Chief Commissioner of Police.
- (6) A disclosure—
 - (a) may be made orally or in writing; and
 - (b) must be made in accordance with the prescribed procedure.
- (7) A disclosure made in relation to a member of Parliament is not to be taken to be a contempt of Parliament.

7. Can a person make an anonymous disclosure?

A person may make a disclosure under this Part anonymously.

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

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

9. Can a disclosure be about past conduct?

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 2—Disclosures of Improper Conduct

s. 10

10. Privileges of Parliament and legal professional privilege not affected

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

PART 3—PROTECTION OF WHISTLEBLOWERS

11. Application of Part

This Part only applies to a protected disclosure.

12. What is a protected disclosure?

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

13. Certain further information also protected

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

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

14. Immunity from liability

A person who makes a protected disclosure is not subject to any civil or criminal liability or any liability arising by way of administrative process (including disciplinary action) for making the protected disclosure.

S. 13(2)(d)
amended by
No. 32/2004
s. 22.

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 3—Protection of Whistleblowers

s. 15

15. Confidentiality provisions do not apply

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

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

16. Protection from defamation action

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

17. Liability for own conduct

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

18. Protection from reprisal

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

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 3—Protection of Whistleblowers

s. 19

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

19. Proceedings for damages for reprisal

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 3—Protection of Whistleblowers

s. 20

20. Application for injunction or order

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

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

21. Injunction or order

- (1) If, on receipt of an application under section 20, the Supreme Court is satisfied that a person has taken or intends to take detrimental action against a person in reprisal for a protected disclosure, the Court may—
 - (a) order the person who took the detrimental action to remedy that action; or
 - (b) grant an injunction in any terms the Court considers appropriate.
- (2) The Supreme Court, pending the final determination of an application under section 20, may—
 - (a) make an interim order in the terms of subsection (1)(a); or
 - (b) grant an interim injunction.

22. Offence to reveal confidential information

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 3—Protection of Whistleblowers

s. 22

S. 22(1)(a)
amended by
No. 32/2004
s. 22.

Victorian Legislation and Parliamentary Documents

- (a) the exercise of the functions under this Act of the President of the Legislative Council, the Speaker of the Legislative Assembly, the Ombudsman, the Police Ombudsman, the Chief Commissioner of Police or a public body; or
- (b) any report or recommendation to be made under this Act; or
- (c) any report referred to in Part 9; or
- (d) any proceedings in relation to an offence against section 60 or section 106 or this section or section 19 of the **Evidence Act 1958**; or
- (e) any criminal or disciplinary proceedings taken against a member of the police force as a result of an investigation of a disclosed matter by the Chief Commissioner of Police under Part 7.

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

- (2) The Ombudsman or a public body must not in a report or recommendation under this Act or a report referred to in Part 9 disclose particulars likely to lead to the identification of a person who made a protected disclosure.
- (3) The Ombudsman or a public body must not in a report referred to in Part 9 disclose particulars likely to lead to the identification of a person against whom a protected disclosure is made.
- (4) Nothing in this section affects the operation of section 90.

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 3—Protection of Whistleblowers

s. 23

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

- (1) If the Ombudsman makes a determination under Part 4 that a disclosure is not a public interest disclosure, this Part does not apply to—
 - (a) any further disclosure to the Ombudsman or the public body of the subject-matter of that disclosure; or
 - (b) the provision to the Ombudsman or the public body of any further information in relation to the subject-matter of the disclosure.

(2) If—

- (a) the Police Ombudsman, the Chief 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 Police Ombudsman, the Chief Commissioner of Police or a public body (as the case requires) to refer the disclosure to the Ombudsman for determination—

S. 23(2) amended by No. 32/2004 s. 22.

S. 23(2)(a) amended by No. 32/2004 s. 22.

S. 23(2)(b) amended by No. 32/2004 s. 22.

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 3—Protection of Whistleblowers

s. 23

-
- (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, the President of the Legislative Council or the Speaker of the Legislative Assembly of the subject-matter of that disclosure; or
 - (b) the provision to the Ombudsman, the President of the Legislative Council or the Speaker of the Legislative Assembly of any further information in relation to the subject-matter of the disclosure.
-

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 4—Determination of Public Interest Disclosures

s. 24

**PART 4—DETERMINATION OF PUBLIC INTEREST
DISCLOSURES**

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

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

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

25. Notice of determination

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 4—Determination of Public Interest Disclosures

s. 26

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

If—

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

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

27. Notice of alternative procedure

- (1) If the Ombudsman—
 - (a) determines that a disclosure is not a public interest disclosure; and
 - (b) considers that the disclosure could constitute a complaint under the **Ombudsman Act 1973** or the **Police Regulation Act 1958**—
 the Ombudsman must notify the person who made the disclosure of the person's right to have the disclosure dealt with as a complaint under the **Ombudsman Act 1973** or the **Police Regulation Act 1958** (as the case requires).
- (2) A person who is given notice under sub-section (1) may by notice in writing to the Ombudsman request that the disclosure be dealt with as a complaint under the **Ombudsman Act 1973** or the **Police Regulation Act 1958** (as the case requires).

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 4—Determination of Public Interest Disclosures

s. 28

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

S. 27(5)
 amended by
 No. 32/2004
 s. 22.

Division 2—Disclosures made to public bodies

28. Consideration whether a disclosure is a public interest disclosure

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 4—Determination of Public Interest Disclosures

s. 29

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

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

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

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 4—Determination of Public Interest Disclosures

s. 31

31. Request for referral to Ombudsman

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

32. Determination by Ombudsman

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

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

33. Consideration whether a disclosure is a public interest disclosure

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

S. 33(1)
amended by
No. 32/2004
s. 22.

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 4—Determination of Public Interest Disclosures

s. 34

S. 33(3)
amended by
No. 32/2004
s. 22.

- (3) In reaching a conclusion under this section, the Police Ombudsman or the Chief Commissioner of Police (as the case requires) must consider whether the disclosure shows or tends to show that the member of the police force to whom the disclosure relates—
- (a) has engaged, is engaging or proposes to engage in improper conduct in his or her capacity as a member of the police force; or
 - (b) has taken, is taking or proposes to take detrimental action in contravention of section 18.

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

S. 34(1)
amended by
No. 32/2004
s. 22.

- (1) If, under section 33, the Police Ombudsman or Chief 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 it is a public interest disclosure.

S. 34(2)
amended by
No. 32/2004
s. 22.

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

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

S. 35(1)
amended by
No. 32/2004
s. 22.

- (1) If, under section 33, the Police Ombudsman or Chief 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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 4—Determination of Public Interest Disclosures

s. 36

(b) advise the person that—

- (i) he or she may request that the disclosure be referred to the Ombudsman for a determination as to whether it is a public interest disclosure; and
 - (ii) the person's request must be made within 28 days of the notification.
- (2) This section does not apply in respect of a person who made an anonymous disclosure.

36. Request for referral to Ombudsman

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

S. 36
amended by
No. 32/2004
s. 22.

37. Determination by Ombudsman

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

S. 37(2)
amended by
No. 32/2004
s. 22.

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 38

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

Division 1—Functions of Ombudsman

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

The Ombudsman's functions under this Act are—

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 39

Division 2—Requirement to investigate

39. Duty to investigate

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

40. Which matters do not have to be investigated?

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

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

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 42

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

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

43. Referral of certain public interest disclosures to Police Ombudsman for investigation

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

S. 43
(Heading)
amended by
No. 32/2004
s. 22.

S. 43(1)
amended by
No. 32/2004
s. 22.

S. 43(2)
amended by
No. 32/2004
s. 22.

S. 43(3)
amended by
No. 32/2004
s. 22.

S. 43(4)
inserted by
No. 32/2004
s. 23.

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 44

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

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

45. What information may the Ombudsman provide?

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

46. Notice of referral

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

Division 3—Investigation by Ombudsman

47. Procedures for investigation

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 48

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

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

49. Secondment of others for certain investigations

- (1) The Ombudsman may request a prescribed public body to make available staff to assist the Ombudsman in the investigation of a disclosed matter.
- (2) On a request under sub-section (1), the prescribed public body must make available such staff as the prescribed public body thinks necessary to assist the Ombudsman in the investigation of a disclosed matter.
- (3) Every person made available to the Ombudsman under this section remains under the direction and control of the prescribed public body but must in assisting the Ombudsman have regard to the wishes of the Ombudsman concerning the conduct of an investigation.

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 50

50. Notice of the investigation

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 51

(g) if the disclosed matter relates to any other member of the police force, the Chief Commissioner of Police.

51. Investigation to be private

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

52. A hearing is not required

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

53. Legal representation

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

54. How is evidence to be taken?

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 55

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

- (1) Without limiting section 54, in an investigation of a disclosed matter relating to a member of the police force, the Ombudsman may direct a member of the force to give any relevant information, produce any relevant document or answer any relevant question.
- (2) A member of the police force who does not comply with a direction under sub-section (1) commits a breach of discipline under section 69 of the **Police Regulation Act 1958**.
- (3) Except in proceedings for perjury, for a breach of discipline under section 69 of the **Police Regulation Act 1958** or for failure to comply with a direction, any information or answer that is given, or document that is produced, pursuant to a direction under sub-section (1) is not admissible in evidence before any court or person acting judicially.

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

- (1) An obligation to maintain confidentiality or any other restriction on the disclosure of information obtained by or furnished to persons in the service of the Crown or any public body that is imposed by any Act or oath or rule of law or practice or under an agreement does not apply to the disclosure of information for the purposes of an investigation by the Ombudsman of a disclosed matter.
- (2) The Crown is not, in relation to an investigation by the Ombudsman of a disclosed matter, entitled to any privilege in respect of the production of documents or the giving of evidence that is allowed by law in legal proceedings.

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 57

- (3) Subject to sub-sections (1) and (2) and section 55, a person cannot be compelled for the purposes of an investigation by the Ombudsman of a disclosed matter to produce any document or give any evidence that the person could not be compelled to produce or give in proceedings before a court.

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

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

S. 57(1)(c)(i)
substituted by
No. 110/2003
s. 64.

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 58

- (2) A person is not required or authorised by this Part to provide or inspect a document that is an exempt document under section 28 of the **Freedom of Information Act 1982**.
- (3) A certificate issued by the Secretary to the Department of Premier and Cabinet certifying that any information or question relates to a deliberation or decision of the Cabinet or a deliberation of a committee referred to sub-section (1) is conclusive of the fact so certified.
- (4) In this section "**Cabinet**" includes a committee or sub-committee of Cabinet.

58. Power to enter premises

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

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

59. Consultation and comment

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

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 60

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

60. Obstruction

- (1) A person must not—
 - (a) without lawful excuse, wilfully obstruct, hinder or resist the Ombudsman in the exercise of his or her powers under this Part; or
 - (b) without lawful excuse, refuse to or wilfully fail to comply with any lawful requirement of the Ombudsman under this Part; or
 - (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 2 years imprisonment or both.

- (2) In sub-section (1)(b), "**lawful requirement**", in relation to a member of the police force, means a requirement of a kind that is agreed between the Ombudsman and the Chief Commissioner of Police to be appropriate for the Ombudsman to make.

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 61

61. 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 any person unless that person has been given an opportunity of being heard in the matter and their defence is fairly set out in the report.

Division 3A—Further Provisions for Investigations by Police Ombudsman

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

61A. Application of Division

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

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

61B. Evidence in Police Ombudsman investigations

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

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

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

- (2) Subject to this section, section 55 and section 56(1) and (2), a person cannot be compelled, for the purposes of an investigation, to produce any document or give any evidence that he or she could not be compelled to produce or give in proceedings before a court.

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 61B

- (3) It is not a reasonable excuse for a person to fail to provide information, produce a document or thing or give evidence for the purposes of an investigation, on the ground that the information, document, thing or evidence may tend to incriminate the person, if the Police Ombudsman certifies in writing that, in his or her opinion, the provision of the information, production of the document or thing or giving of the evidence is necessary in the public interest.
- (4) In determining whether or not to certify under sub-section (3), the Police Ombudsman may take into account, amongst other things, whether—
 - (a) the investigation involves the review of established policies, practices or procedures of the force; and
 - (b) it is unlikely that the information, document, thing or evidence could be obtained by other means.
- (5) Sub-section (3) applies despite anything to the contrary in this Act or Division 5 of Part I of the **Evidence Act 1958**.
- (6) If the Police Ombudsman certifies under sub-section (3), he or she must give a copy of the certificate to the person before requiring the person to provide information, produce a document or thing or give evidence.
- (7) Any information provided, or document or thing produced, or evidence given to the Police Ombudsman by a person in circumstances where the Police Ombudsman has certified under sub-section (3) is not admissible in evidence against that person before any court or person acting judicially, except in proceedings for—
 - (a) perjury or giving false information; or

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 61C

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

61C. Powers with search warrant

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

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 61D

- (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** (other than section 78 of that Act) extend and apply to warrants under this section.
- (5) For the avoidance of doubt, this section applies to any premises, whether or not occupied by a public officer or public body.

61D. Procedure for executing warrant

- (1) On executing a search warrant, the person executing the warrant—
- (a) must announce that he or she is authorised by the warrant to enter the premises; and
 - (b) if the person has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.
- (2) A person executing a warrant need not comply with sub-section (1) if he or she believes, on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 61E

- (3) If the occupier is present at premises where a search warrant is being executed, the person executing the warrant must—
 - (a) identify himself or herself to the occupier; and
 - (b) give the occupier a copy of the warrant.
- (4) If the occupier is not present at premises where a search warrant is being executed, the person executing the warrant must—
 - (a) identify himself or herself to a person at the premises; and
 - (b) give that person a copy of the warrant.

61E. Copies or receipts to be given

- (1) If a person takes possession of—
 - (a) a document, disk or tape or other thing that can be readily copied; or
 - (b) a storage device the information in which can be readily copied—

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

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

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 61F

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

61F. Retention and return of documents and other things

- (1) If a person takes possession of a document or other thing under a warrant, the Police Ombudsman may keep it until the investigation in relation to which the warrant was issued has been completed and the report of that investigation has been made under section 62.
- (2) When the report has been made, the Police Ombudsman must take all reasonable steps to return the document or other thing to the person from whom it was taken.

Division 4—Action on completion of investigation

62. Report on investigation by Police Ombudsman to Ombudsman

The Police Ombudsman must report to the Ombudsman on an investigation of a disclosed matter in the manner that the Ombudsman determines.

63. Report on investigation

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

S. 62
(Heading)
amended by
No. 32/2004
s. 25.

S. 62
amended by
No. 32/2004
s. 25.

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 64

- (c) in the case of the Chief Commissioner of Police, the Police Minister;
 - (d) in the case of any other member of the police force, the Chief Commissioner of Police.
- (3) Recommendations under sub-section (1) may include—
- (a) a recommendation that the disclosed matter be referred to an appropriate authority for further consideration;
 - (b) a recommendation that action be taken to remedy any harm or loss arising from the conduct;
 - (c) a recommendation that action be taken to prevent the conduct from continuing or occurring in the future.
- (4) This section applies to an investigation of a disclosed matter by the Ombudsman or the Police Ombudsman.

S. 63(4)
amended by
No. 32/2004
s. 25.

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.

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 65

65. Implementation of recommendations in relation to members of the police force

- (1) If, in a report under section 63 in relation to a member of the police force (other than the Chief Commissioner of Police), there is a recommendation as to the action to be taken as a result of the investigation and the Chief Commissioner of Police disagrees with the recommendation, the Ombudsman and the Chief 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 a member of the police force.

66. Report to Parliament

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 5—Investigation of Public Interest Disclosures by the Ombudsman

s. 67

67. Person who made disclosure to be informed

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

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

Division 1—Establishment of procedures

68. Public body to establish procedures

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

69. Ombudsman's guidelines

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 6—Investigation of Public Interest Disclosures by Public Bodies

s. 70

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

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

70. Availability of procedures

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

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

71. Review of procedures

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

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

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

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 6—Investigation of Public Interest Disclosures by Public Bodies

s. 72

Division 2—Requirement to investigate

72. Duty to investigate

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

73. Referral to Ombudsman by public body

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

74. Request to Ombudsman by person making disclosure

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

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

75. Ombudsman may take over an investigation

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 6—Investigation of Public Interest Disclosures by Public Bodies

s. 76

76. Provision of information to Ombudsman

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

77. What can the Ombudsman do?

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 6—Investigation of Public Interest Disclosures by Public Bodies

s. 78

78. Notice of referral

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

Division 3—Investigation by public body

79. Investigation to be in accordance with procedures

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

80. Information about progress of investigation

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 6—Investigation of Public Interest Disclosures by Public Bodies

s. 81

Division 4—Action on investigation

81. What action must the public body take?

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

82. Report on investigation

- (1) On completing an investigation of a disclosed matter, a public body must notify in writing—
 - (a) the Ombudsman of the findings of the investigation and the steps (if any) taken under section 81; and

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 6—Investigation of Public Interest Disclosures by Public Bodies

s. 83

- (b) the relevant person or body of the steps (if any) taken under section 81.
- (2) For the purposes of sub-section (1), a relevant person or body is—
 - (a) in the case of an investigation of a disclosed matter relating to an officer or employee of a municipal council, that council;
 - (b) in any other case, the relevant Minister.

83. Report to person making disclosure

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 7—Investigation of Public Interest Disclosures Referred to Chief
Commissioner of Police

s. 84

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

Division 1—Requirement to investigate

84. Duty to investigate

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

85. Request to Ombudsman by person making disclosure

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

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

86. Ombudsman may take over an investigation

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 7—Investigation of Public Interest Disclosures Referred to Chief
Commissioner of Police

s. 87

87. Provision of information to Ombudsman

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

88. What can the Ombudsman do?

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 7—Investigation of Public Interest Disclosures Referred to Chief
Commissioner of Police

s. 89

89. Notice of referral

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

Division 2—Investigation by Chief Commissioner of Police

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

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

91. Progress reports to Ombudsman on investigations

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 7—Investigation of Public Interest Disclosures Referred to Chief
Commissioner of Police

s. 92

Division 3—Action on investigation

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

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

93. Report to Ombudsman

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

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

94. Implementation of recommendations

- (1) If the Ombudsman disagrees with the Chief Commissioner of Police as to what steps (if any) should be taken, the Ombudsman and the Chief Commissioner of Police must refer the matter to the Police Minister.

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 7—Investigation of Public Interest Disclosures Referred to Chief
Commissioner of Police

s. 95

-
- (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 a member of the police force.

95. Report to person making disclosure

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 8—Investigation of Disclosures about Members of Parliament

s. 96

PART 8—INVESTIGATION OF DISCLOSURES ABOUT MEMBERS OF PARLIAMENT

96. Referral of disclosure to Ombudsman

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

97. Determination of disclosure as public interest disclosure

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

98. Notice of determination

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 8—Investigation of Disclosures about Members of Parliament

s. 99

99. Investigation by Ombudsman

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

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

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

101. Report on investigation

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

PART 9—ANNUAL REPORTS AND OTHER REPORTS

102. Annual report by Ombudsman

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

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

S. 102(e)(iii)
amended by
No. 32/2004
s. 25.

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 9—Annual Reports and Other Reports

s. 103

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

103. Other reports by Ombudsman

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 9—Annual Reports and Other Reports

104. Annual reports by public body

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

- (a) the current procedures established by the public body under Part 6;
- (b) the number and types of disclosures made to the public body during the year;
- (c) the number of disclosures referred during the year by the public body to the Ombudsman for determination as to whether they are public interest disclosures;
- (d) the number and types of disclosed matters referred to the public body during the year by the Ombudsman;
- (e) the number and types of disclosed matters referred during the year by the public body to the Ombudsman to investigate;
- (f) the number and types of investigations of disclosed matters taken over by the Ombudsman from the public body during the year;
- (g) the number of requests made under section 74 during the year to the Ombudsman to investigate disclosed matters;
- (h) the number and types of disclosed matters that the public body has declined to investigate during the year;
- (i) the number and types of disclosed matters that were substantiated on investigation and the action taken on completion of the investigation;
- (j) any recommendations of the Ombudsman under this Act that relate to the public body.

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

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 10—General

s. 106

PART 10—GENERAL

106. Offence to make false disclosure

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

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

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

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

107. Protection of Ombudsman and officers of Ombudsman

- (1) The Ombudsman, the Police Ombudsman and any officer of the Ombudsman are not liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he or she would have been liable apart from this section in respect of any act done or purporting to be done under this Act, unless the act was done in bad faith.
- (2) No civil or criminal proceedings may be brought against the Ombudsman, the Police Ombudsman or any officer of the Ombudsman in respect of any act of a kind referred to in sub-section (1) without the leave of the Supreme Court.

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 10—General

s. 107

-
- (3) The Supreme Court may not give leave unless it is satisfied that there is substantial ground to believe that the person to be proceeded against has acted in bad faith.
- (4) Despite sub-sections (1), (2) and (3)—
- (a) no order may be made—
- (i) restraining the Ombudsman or the Police Ombudsman from carrying out, or compelling him or her to carry out, any investigation; or
- (ii) restraining the Ombudsman or the Police 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 under which the issue of such an order is sought.
- (5) The Ombudsman, the Police Ombudsman and any officer of the Ombudsman may not be called to give evidence in any court or in any legal proceedings or before the Police Appeals Board in respect of any matter coming to his or her knowledge in the exercise of his or her functions under this Act.

S. 107(4)(a)(i)
amended by
No. 32/2004
s. 25.

S. 107(4)(a)(ii)
amended by
No. 32/2004
s. 25.

S. 107(5)
amended by
No. 32/2004
s. 25.

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 10—General

s. 108

108. Evidence not admissible

- (1) Information is not admissible as evidence (if given by a party) in legal proceedings if it was obtained or received by the party—
 - (a) from the Ombudsman, the Police Ombudsman, the Chief Commissioner of Police or a public body in the course of or as a result of—
 - (i) a disclosure under Part 2; or
 - (ii) the investigation of a disclosed matter under this Act; or
 - (b) from any person who obtained it in that way.
- (2) Sub-section (1) does not apply to—
 - (a) proceedings in relation to an offence against section 18, 60 or 106 of this Act or section 19 of the **Evidence Act 1958**;
 - (b) proceedings under section 19 or 20 of this Act; or
 - (c) a criminal or disciplinary proceeding taken against a member of the police force as a result of an investigation of a disclosed matter by the Chief Commissioner of Police under Part 7.
- (3) Nothing in this section affects the operation of section 90.

109. Exemption from Freedom of Information Act 1982

- (1) The **Freedom of Information Act 1982** does not apply to a document that is in the possession of a public body that is an agency under that Act, or is deemed under an enactment to be an agency under that Act, or the Ombudsman, the Police Ombudsman, any officer of the Ombudsman or the Chief Commissioner of Police, to the extent to which the document discloses information—

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 10—General

s. 110

- (a) in relation to a disclosure made under Part 2; or
- (b) likely to lead to the identification of a person who made a disclosure under Part 2; or
- (c) likely to lead to the identification of a person against whom a disclosure under Part 2 is made.

(2) In this section—

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

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

110. Supreme Court—limitation of jurisdiction

- (1) It is the intention of section 107 of this Act to alter or vary section 85 of the **Constitution Act 1975**.
- (2) It is the intention of section 107 of this Act, as amended by section 25 of the **Ombudsman Legislation (Police Ombudsman) Act 2004**, to alter or vary section 85 of the **Constitution Act 1975**.

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

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

111. Service on a person making a disclosure

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

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 10—General

s. 111A

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

Victorian Legislation and Parliamentary Documents

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

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

(2) In this section—

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

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

112. Regulations

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 11—Amendment of Related Acts

s. 113

PART 11—AMENDMENT OF RELATED ACTS

Division 1—Amendment of Ombudsman Act 1973

113. Protection of the Ombudsman and the officers of the Ombudsman

In section 29 of the **Ombudsman Act 1973**, for sub-section (3) **substitute**—

"(3) Despite sub-sections (1) and (2)—

(a) no order shall be made—

(i) restraining the Ombudsman from carrying out, or compelling him to carry out, an enquiry to determine whether an investigation should be conducted; or

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

(iii) restraining the Ombudsman from making, or compelling him to make a report; or

(iv) restraining the Ombudsman from making, or compelling him to make a recommendation; and

(b) no proceedings shall be brought against the Ombudsman under which the issue of such an order is sought."

See:
Act No.
8414.
Reprint No. 5
as at
1 January
1997
and
amending
Act Nos
93/1997,
15/1998,
46/1998,
102/1998 and
61/1999.
LawToday:
www.dms.
dpc.vic.
gov.au

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 11—Amendment of Related Acts

114. New section 29A inserted

After section 29 of the **Ombudsman Act 1973**
insert—

'29A. Exemption from Freedom of Information Act 1982

- (1) The **Freedom of Information Act 1982** does not apply to a document that is in the possession of the Ombudsman, the Deputy Ombudsman or any officer of the Ombudsman, to the extent to which the document discloses information that relates to—
- (a) a complaint; or
 - (b) an enquiry under Part IIIA to determine whether an investigation should be conducted; or
 - (c) an investigation under Part IV; or
 - (d) a report made under Part IV; or
 - (e) a recommendation made under Part IV.

- (2) In this section—

"document" has the same meaning as in the **Freedom of Information Act 1982**.'

115. New section 30A inserted

After section 30 of the **Ombudsman Act 1973**
insert—

"30A. Supreme Court—limitation of jurisdiction

It is the intention of section 29(3) of this Act, as substituted by section 113 of the **Whistleblowers Protection Act 2001**, to alter or vary section 85 of the **Constitution Act 1975**."

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 11—Amendment of Related Acts

s. 116

Division 2—Amendment of Police Regulation Act 1958

116. Breaches of discipline

In section 69(1) of the **Police Regulation Act 1958**, after paragraph (a) insert—

"(ab) fails to comply with a direction under section 55 or 90 of the **Whistleblowers Protection Act 2001**; or".

See:
Act No.
6338.
Reprint No. 8
as at
15 October
1998
and
amending
Act Nos
30/1999 and
61/1999.
LawToday:
www.dms.
dpc.vic.
gov.au

117. Making of complaints

After section 86L(2A) of the **Police Regulation Act 1958** insert—

"(2B) If a member of the force is required to make a complaint under section 86L(2A) about the conduct of another member of the force, it is sufficient compliance for the purposes of that sub-section if the member makes a disclosure of that conduct in accordance with Part 2 of the **Whistleblowers Protection Act 2001** to—

- (a) if the disclosure relates to the Chief Commissioner, the Ombudsman or the Deputy Ombudsman; or
- (b) if the disclosure relates to any other member of the force, the Ombudsman, the Deputy Ombudsman or the Chief Commissioner."

118. New section 86LA inserted

After section 86L of the **Police Regulation Act 1958** insert—

"86LA. Whistleblowers Protection Act 2001 applies to certain complaints

- (1) If a member of the force makes a complaint in accordance with section 86L(2A) to a member of the force of a more senior rank about a member other than the Chief Commissioner, the member receiving the complaint must refer the complaint to the Chief Commissioner.
- (2) The **Whistleblowers Protection Act 2001** applies to a complaint referred to in subsection (1) as if the complaint were a disclosure made to the Chief Commissioner in accordance with Part 2 of that Act.
- (3) The **Whistleblowers Protection Act 2001** applies to a complaint made by a member of the force in accordance with section 86L(2A), to the Deputy Ombudsman about the Chief Commissioner, as if the complaint were a disclosure made to the Deputy Ombudsman in accordance with Part 2 of that Act.
- (4) The **Whistleblowers Protection Act 2001** applies to a complaint made by a member of the force in accordance with section 86L(2A), to the Deputy Ombudsman about any other member of the force, as if the complaint were a disclosure made to the Deputy Ombudsman in accordance with Part 2 of that Act."

Whistleblowers Protection Act 2001
Act No. 36/2001

Part 11—Amendment of Related Acts

s. 119

119. New section 86TA inserted

After section 86T of the **Police Regulation Act 1958** insert—

'86TA. Exemption from Freedom of Information Act 1982

- (1) The **Freedom of Information Act 1982** does not apply to a document that is in the possession of the Ombudsman, the Deputy Ombudsman or any officer of the Ombudsman to the extent to which the document discloses information that relates to—
- (a) a complaint investigated by the Deputy Ombudsman under section 86N(4); or
 - (b) an investigation under this Division of that complaint; or
 - (c) a report on that investigation, including a report on the progress of the investigation.
- (2) In this section—
- "document"** has the same meaning as in the **Freedom of Information Act 1982**.'.
-
-

Whistleblowers Protection Act 2001
Act No. 36/2001

Endnotes

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 31 August 2000

Legislative Council: 1 May 2001

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

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 31 August 2000

Legislative Council: 1 May 2001

Absolute majorities:

Legislative Assembly: 5 April 2001, 14 June 2001

Legislative Council: 16 May 2001

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

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Endnotes

2. Table of Amendments

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

Parliamentary Committees Act 2003, No. 110/2003

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

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

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

Whistleblowers Protection Act 2001
Act No. 36/2001

Endnotes

3. Explanatory Details

No entries at date of publication.