

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

WHISTLEBLOWERS PROTECTION BILL 1993

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1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(SENATOR CHAMARETTE)

A BILL

FOR

**An Act to provide protection for persons disclosing illegal
conduct or improper conduct, and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives
of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Whistleblowers Protection Act 1993*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Objects

10 3. The objects of this Act are:
 (a) to facilitate the disclosure, in the public interest, of conduct reasonably believed
 to be illegal, improper or to constitute a danger to public health or safety or
 to national security; and

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- (b) to protect persons who are harassed or discriminated against by reason of having made, or having been alleged or believed to have made, disclosures of a kind described in paragraph (a); and
- (c) to provide for the investigation of disclosures of a kind described in paragraph (a) and of alleged harassment or discrimination of a kind described in paragraph (b); and 5
- (d) to promote the ethic of openness and public accountability; and
- (e) to improve community perception of whistleblowers, in recognition of the fact that they are responsible citizens. 10

Interpretation

4.(1) In this Act, unless the contrary intention appears:

“Agency” means the Whistleblowers Protection Agency established by section 8;

“allegations of wrongdoing” has the meaning given in section 6; 15

“authorised person” means:

- (a) a member of the staff of the Agency appointed by the Commissioner to be an authorised person for the purposes of this Act; or
- (b) a person included in a class of persons (being a class each of whom is a member of the staff of the Agency) appointed by the Commissioner to be authorised persons for the purposes of this Act; 20

“Commissioner” means the person holding office as the Commissioner under section 12 or a person acting in that office under section 21; 25

“complaint” means a complaint made to the Agency under section 22 containing all or any of the following:

- (a) an allegation of wrongdoing;
- (b) an allegation of the commission of a prohibited personnel practice; 30
- (c) an allegation of the harassment of the complainant or another person;

“Department” means a Department of the Australian Public Service;

“enactment” means: 35

- (a) an Act; or
- (b) an Ordinance of a Territory other than the Northern Territory or the Australian Capital Territory; or

- (c) an instrument (including rules, regulations or by-laws) made under an Act or such an Ordinance;

“Federal Court” means the Federal Court of Australia;

“federal public service” means:

- 5 (a) the Australian Public Service; or
(b) any other service or employment (including the Australian Defence Force) established by or under an enactment other than a service of or employment by a prescribed authority; or
10 (c) service by way of employment under the *Members of Parliament (Staff) Act 1984*; or
(d) service by way of employment by a prescribed authority; or
(e) service as the holder of, or as a person acting as the holder of, a statutory office;

15 **“harassment”** means harassment of a person carried out wholly or partly by reason that the person has disclosed, or is believed or alleged to have disclosed, an allegation of wrongdoing to the Agency or otherwise;

“Member of the Parliament” includes a Member of the Parliament in the capacity of a Minister of State;

“officer” means:

- 20 (a) in relation to a Department:
(i) a person, including the principal officer of the Department, employed, whether in a permanent or temporary capacity, in the Department; or
(ii) any other person (not being a Minister) authorised to exercise powers or perform functions of the Department on behalf of the Department
25 or to provide services to or for the Department; or
(b) in relation to a prescribed authority:
(i) the person who constitutes, or is acting as the person who constitutes, the authority; or
(ii) a person who is, or is acting as, a member of the authority or is a deputy of such member; or
30 (iii) a person who is employed in the service of, or is a member of the staff of, the authority, whether or not employed by the authority; or

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- (iv) a person authorised by the authority to exercise any powers or perform any functions of the authority on behalf of the authority; or
- (c) in relation to any other part of the federal public service:
 - (i) the person who constitutes, or is acting as the person who constitutes, that part; or 5
 - (ii) a person on the staff of, in the service of or employed in that part, whether in a permanent or temporary capacity; or
 - (iii) any other person (not being a Minister) authorised to exercise powers or perform functions of that part on behalf of that part or to provide services to or for that part; 10

“Parliamentary Committee” means the Parliamentary Joint Committee on the Whistleblowers Protection Agency established by section 40;

“prescribed authority” means: 15

- (a) a body corporate, or an unincorporated body, established by, or in accordance with the provisions of, an enactment, other than:
 - (i) a body that under subsection (2) or the regulations is not to be taken to be a prescribed authority for the purposes of this Act; or
 - (ii) the Legislative Assembly of the Northern Territory; or 20
 - (iii) the Legislative Assembly of the Australian Capital Territory; or
- (b) any other body, whether incorporated or unincorporated, being:
 - (i) a body established by the Governor-General or a Minister; or
 - (ii) an incorporated company over which the Commonwealth, or a body that is, by the application of another paragraph or subparagraph of this definition, a prescribed authority, is in a position to exercise control; 25

“principal officer” means:

- (a) in relation to a Department – the person holding or performing the duties of Secretary to the Department; or 30
- (b) in relation to another service referred to in paragraph (b) of the definition of “federal public service” in this subsection – the head of that service; or
- (c) in relation to employment under the *Members of Parliament (Staff) Act 1984* – the Member of Parliament who is the employer in the particular case; or 35

- (d) in relation to a prescribed authority:
- (i) if the regulations declare an office to be the principal office in respect of the authority – the person holding, or performing the duties of, that office; or
 - (ii) in any other case – the person who constitutes, or is acting as the person who constitutes, that authority or, if the authority is constituted by two or more persons, the person who is entitled to preside at any meeting of the authority at which he or she is present;

“prohibited personnel practice” means a practice of a kind described in section 7;

“responsible Minister” means:

- (a) in relation to a Department of the Australian Public Service other than the Department of the Senate, the Department of the House of Representatives, the Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff and the Joint House Department – the Minister administering that Department; or
- (b) in relation to the Department of the Senate – the President of the Senate; or
- (c) in relation to the Department of the House of Representatives – the Speaker of the House of Representatives; or
- (d) in relation to the Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff and the Joint House Department – the President of the Senate and the Speaker of the House of Representatives; or
- (e) in relation to a prescribed authority – the Minister administering the enactment by which, or in accordance with which, the prescribed authority is established;
- (f) in relation to any other prescribed authority – the Minister declared by the regulations to be the responsible Minister in respect of that authority; or
- (h) in relation to any other part of the federal public service – the Minister responsible for that part of the service;

“statutory office” means:

- (a) an office or appointment established by an enactment; or
- (b) any other office or appointment the holder of which is appointed by the Governor-General or a Minister;

other than:

- (c) an office or appointment declared by the regulations not to be a statutory office for the purposes of this Act; or

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- (d) an office of Justice or Judge of the High Court, of a court established by the Parliament or of the Supreme Court of a Territory; or
- (e) an office the holder of which has, by virtue of an enactment, the status of a Justice or Judge of a court referred to in paragraph (d); or
- (f) an office or appointment in the Australian Public Service; or 5
- (g) an office of Member of the Parliament, member of the Legislative Assembly of the Northern Territory or member of the Legislative Assembly of the Australian Capital Territory; or
- (h) an office or appointment the holder of which performs the duties of the office as an officer or employee of the federal public service or a member of the staff of a prescribed authority; or 10
- (i) an office of member of a body; or
- (j) an office established by an enactment for the purposes of a prescribed authority. 15

(2) An unincorporated body, being a board, council, committee, subcommittee or other body established by, or in accordance with the provisions of, an enactment for the purpose of assisting, or performing functions connected with, the federal public service shall not be taken to be a separate prescribed authority for the purposes of this Act but shall be treated as incorporated in the part of the federal public service that it is so assisting or in connection with which it is performing functions. 20

(3) A person holding or acting in an office or appointment referred to in paragraph (h), (i) or (j) of the definition of "statutory office" in subsection (1) shall, for the purposes of this Act, be deemed to be in the service or employment of: 25

- (a) in the case of a person holding or acting in an office or appointment referred to in paragraph (h) of that definition – the relevant part of the federal public service; or
- (b) in the case of a person holding or acting in an office referred to in paragraph (i) of that definition – the body concerned; or 30
- (c) in the case of a person holding or acting in an office referred to in paragraph (j) of that definition – the prescribed authority concerned.

(4) Where a person or body is engaged as a consultant to, or to provide services for, a part of the federal public service, that person or body shall, while doing an act for the purposes of, or in connection with, the performance of functions as consultant or the provision of those services, as the case may be, be deemed to be employed in the federal public service. 35

Act binds Crown

5. This Act binds the Crown in each of its capacities.

Allegation of wrongdoing

6.(1) In this Act, "allegation of wrongdoing" means an allegation that:

- 5 (a) a person to whom this subsection applies by virtue of subsection (2) has committed, or been involved in the commission by another person of:
- (i) an infringement of the law; or
 - (ii) a gross waste of public moneys; or
 - 10 (iii) an act constituting an abuse of the authority vested in the member or in another person, as the case may be; or
 - (iv) an act constituting or resulting in substantial danger to public health or safety; or
 - (v) gross mismanagement of public moneys or property; or
 - 15 (vi) the suppression of an expert opinion, finding or document prepared by another person; or
- (b) a person to whom this subsection applies by virtue of subsection (2) has failed, or been involved in the failure of another person, to act in accordance with the law.

(2) Subsection (1) applies to:

- 20 (a) a Member of the Parliament, including such a member in the capacity of a Minister of State; and
- (b) a member of the federal public service.

Personnel action and prohibited personnel practice

7.(1) In this section, "personnel action" means:

- 25 (a) an appointment; or
- (b) a promotion; or
- (c) disciplinary action; or
- (d) reinstatement; or
- (e) a performance evaluation; or
- 30 (f) a transfer or re-assignment of duties; or
- (g) an action concerning pay, training or benefits; or
- (h) any other significant change in duties or responsibilities.

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(2) A person who has authority to take, to direct another person to take, to recommend or to approve any personnel action in respect of a member of the federal public service or an applicant for employment in the federal public service commits a prohibited personnel practice if he or she:

- (a) discriminates against the member or applicant on the ground that the member or applicant has, or is believed or alleged to have, made an allegation of wrongdoing to the Agency or to some other body or person; or 5
- (b) influences or attempts to influence the member or applicant to withdraw from seeking any position on the ground specified in paragraph (a); or
- (c) takes or fails to take a personnel action in respect of a member of, or applicant for employment in, the federal public service as a reprisal for an allegation of wrongdoing that the member or applicant has, or is believed or alleged to have, made to the Agency or to some other body or person. 10

(3) A person commits a prohibited personnel practice: 15

- (a) if the person discriminates against a person as described in paragraph (2)(a) whether the person does so solely on the ground specified in that paragraph or partly on that ground and partly on other grounds; and
- (b) if the person takes or fails to take a personnel action in respect of another person solely as a reprisal of a kind described in paragraph (2)(c) or partly as such a reprisal and partly for other reasons. 20

**PART 2—ESTABLISHMENT, FUNCTIONS AND CONSTITUTION
OF WHISTLEBLOWERS PROTECTION AGENCY**

Establishment of Agency 25

8.(1) An agency, to be known as the Whistleblowers Protection Agency, is established.

- (2) The Agency: 30
- (a) is a body corporate with perpetual succession; and
 - (b) must have a common seal; and
 - (c) may acquire, hold and dispose of real or personal property; and
 - (d) may sue and be sued in its corporate name. 35

(3) All courts, judges and persons acting judicially are to take judicial notice of the imprint of the Agency's common seal appearing on a document and are to presume that the document was duly sealed.

Functions of Agency

9. The Agency has the following functions:

- (a) to receive from any person, and investigate, allegations of wrongdoing and, where appropriate, recommend action to be taken in respect of allegations found to be substantiated; and
- (b) to receive and investigate allegations of prohibited personnel practices and, where appropriate, take or recommend the taking of corrective action; and
- (c) to receive from any person, and investigate, allegations that a person has been subjected to harassment; and
- (d) to bring to the attention of the Parliamentary Joint Committee on the Whistleblowers Protection Agency any matter to which, in the Commissioner's opinion the Parliamentary Joint Committee's attention ought to be drawn; and
- (e) to protect members of the federal public service, former members of the federal public service and applicants for appointment to the federal public service from prohibited personnel practices or harassment; and
- (f) to promote the ethic of openness and public accountability; and
- (g) to improve community perception of whistleblowers, in recognition of the fact that they are responsible citizens.

Powers of Agency

10.(1) The Agency has power to do all things necessary or convenient to be done in connection with the performance of its functions and, in particular, may:

- (a) enter into contracts; and
- (b) acquire, hold and dispose of real or personal property; and
- (c) do anything incidental to any of the powers specified in this section or otherwise conferred on the Agency.

(2) Where the Agency may provide a facility or service, or discharge a function, the Agency may do so:

- (a) itself; or
- (b) in co-operation with another person; or
- (c) by arranging for another person to do so on its behalf.

(3) In subsection (2):

"person" includes:

- (a) the Commonwealth; and
- (b) a State or Territory; and
- (c) an agency of the Commonwealth Government or of the government of a State or Territory.

Constitution of Agency

11. The Agency consists of a single commissioner, to be known as the Whistleblowers Protection Commissioner.

PART 3—COMMISSIONER AND ACTING COMMISSIONER

Appointment of Commissioner

12.(1) The Commissioner is to be appointed by the Governor-General, on the recommendation of the Prime Minister.

- (2) A person is not eligible to be appointed as the Commissioner unless the person:
- (a) is or has been a Judge of a court established by the Parliament or of the Supreme Court of a State or Territory; or
 - (b) is enrolled as a legal practitioner of the Supreme Court of a State or Territory and has been so enrolled for not less than 5 years.

Tenure of office

13.(1) Subject to subsection (2), the Commissioner holds office for such period, of not less than 7 years, as is specified in the instrument of appointment and is eligible for reappointment.

(2) Where the Governor-General has appointed a person as Commissioner under section 10, the Prime Minister shall cause a copy of the instrument of appointment to be laid before each House of the Parliament within 10 sitting days of that House after the making of the appointment.

(3) If either House of the Parliament, in pursuance of a notice of motion which has been given within 10 sitting days after the instrument of appointment has been laid before the House, passes a resolution disallowing the appointment, the appointment ceases to have effect.

(4) If an appointment is disallowed under subsection (3), the person named in the instrument of appointment is deemed not to have been appointed and the Governor-General must appoint another Commissioner.

Terms and conditions of appointment of Commissioner

5 14.(1) Subject to subsections (2) and (3), the terms and conditions of employment of a person appointed as Commissioner under this Part are the same as the terms and conditions (including those relating to superannuation) applicable in relation to an officer performing the duties of an office in the Australian Public Service of an equivalent classification.

(2) Notwithstanding anything in subsection (1) or in the *Commonwealth Employees (Redeployment and Retirement) Act 1979*, that Act does not apply in relation to the employment of a person under this Part.

10 (3) The Commissioner holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Minister.

Remuneration and allowances

15 15.(1) The Commissioner is to be paid such remuneration as is determined by the Remuneration Tribunal.

(2) The Commissioner is to be paid such allowances as are prescribed.

20 (3) The benefits that may be prescribed under subsection (2) are such benefits by way of financial or other assistance in connection with housing, transport, insurance, long service leave and superannuation as the Governor-General considers necessary or desirable to assist the Commissioner in, or place him or her in a position that may facilitate, the performance of his or her functions.

(4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Resignation

16. The Commissioner may resign his or her office by writing signed and delivered to the Governor-General.

25 **Retirement**

17. The Governor-General may, with the consent of the Commissioner, retire him or her on the ground of physical or mental incapacity.

Suspension and removal of member

18.(1) The Governor-General may remove the Commissioner from office on an address praying for the removal on the ground of misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of Parliament.

5

(2) The Governor-General may suspend the Commissioner from office on the ground of misbehaviour or physical or mental incapacity.

(3) Where the Governor-General suspends the Commissioner from office, the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of the House after the suspension.

10

(4) Where such a statement is laid before a House of the Parliament, that House may, within 15 sitting days after the day on which the statement has been laid before it, by resolution, declare that the Commissioner be removed from office and, if each House so resolves, the Governor-General must remove him or her from office.

15

(5) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before it, that House has not passed such a resolution, the suspension terminates.

20

(6) The suspension of the Commissioner from office under this section does not affect the Commissioner's entitlement to be paid remuneration and allowances.

25

(7) The Governor-General may terminate the appointment of the Commissioner if he or she:

- (a)** becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (b)** engages, without the consent of the Minister, in employment outside the duties of the member's office; or
- (c)** is absent from duty, except on leave granted in accordance with section 19, for 14 consecutive days or for 28 days in any period of 12 months; or
- (d)** without reasonable excuse contravenes section 22.

30

35

(8) The Commissioner must not be removed or suspended from office except as provided in this section.

Leave of absence

19. The Minister may grant leave of absence to the Commissioner upon such terms and conditions as to remuneration or otherwise as the Minister determines.

Reappointment of Commissioner to Australian Public Service

5 20.(1) If, immediately prior to his or her appointment, the Commissioner occupied an office under the *Public Service Act 1922*, and his or her term of appointment expires without being renewed by reappointment as the Commissioner, he or she is entitled to be appointed to an office in the Australian Public Service not lower in classification than the office which he or she occupied immediately prior to his or her appointment.

10 (2) The reference in subsection (1) to the Commissioner's term having expired does not include its having expired by reason of the Commissioner having reached 65 years of age.

Acting Commissioner

15 21.(1) The Governor-General may appoint a person with the qualifications set out in subsection 12(2) as Acting Commissioner:

- (a) during a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Commissioner is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office;

20 but a person appointed to act during a vacancy must not continue so to act for more than 12 months.

(2) A person appointed as Acting Commissioner holds office on the same terms and conditions as apply to the Commissioner.

25 **Disclosure of interest**

22.(1) The Commissioner (or a person appointed as Acting Commissioner) must give written notice to the Minister of any direct or indirect interest, pecuniary or otherwise, that he or she has in a matter that has been reported to, or is under investigation by, the Agency, being an interest that could be in conflict with his or her duties as Commissioner.

30 (2) Where an interest is declared to the Minister, the person disclosing the interest shall not take any part in any investigation of the matter by the Agency or in the preparation of any decisions or report of the Agency concerning the matter.

PART 4—INVESTIGATION OF COMPLAINTS

Complaints

23.(1) A complaint under this Act may be made to the Agency orally or in writing. 5

(2) A complaint may be made anonymously.

(3) Where a complaint is made to the Agency, the Agency must, within a reasonable time after receipt of the complaint or of ascertaining the identity and address of the complainant, as the case requires, notify the complainant of the action (if any) it proposes to take as a result of its investigation of the complaint. 10

(4) Where a complaint is made to the Agency anonymously, the Agency may, in its discretion, decide not to investigate the complaint or, if it has commenced to investigate the complaint, decide not to investigate it further, if the Agency is satisfied that the information disclosed in the complaint or subsequently obtained by the Agency is insufficient to permit a proper investigation of the allegations in the complaint. 15

(5) The Agency may decide not to investigate a complaint made to it or, if it has commenced to investigate a complaint made to it, decide not to investigate it further if, in the opinion of the Agency: 20

- (a) the complaint is frivolous or vexatious and there are no special reasons justifying the investigation or further investigation of the complaint; or
- (b) investigation or further investigation of the complaint is unnecessary having regard to all the circumstances of the case. 25

Investigations

24.(1) The Agency may, for the purposes of this Act, obtain information from such persons, and make such inquiries, as it thinks fit. 30

(2) An investigation under this Act shall be conducted in private and, except as otherwise provided by this Act, in such manner as the Agency thinks fit.

(3) Subject to subsection (5), it is not necessary for the complainant or any other person to be afforded an opportunity to appear before the Agency or any other person in connection with an investigation by the Agency under this Act. 35

(4) Where the identity of a complainant is known to the Agency, the Agency must keep the identity of the complainant and the nature of the complaint confidential unless and until it is necessary to reveal them to another person in order to enable that person to make a proper reply to the allegations in the complaint.

5 (5) The Agency shall not make a report in respect of an investigation under this Act in which it:

- (a) sets out opinions that are, either expressly or impliedly, critical of a Department, a prescribed authority or a person; or
- (b) recommends the taking of action by a Department or prescribed authority against a person;

10 unless, before completing the investigation, the Agency has:

- (c) in the case of opinions or recommendations relating to a Department or prescribed authority, afforded the principal officer of the Department or authority and the officer principally concerned in the action to which the investigation relates opportunities to appear before the Commissioner, or an authorised person, and to make such submissions, either orally or in writing, in relation to the action as they think fit; and
- (d) in the case of opinions or recommendations relating to a person, afforded the person an opportunity to appear before the Commissioner, or an authorised person, and to make such submissions, either orally or in writing, in relation to the action to which the investigation relates as he or she thinks fit.

15 (6) Where the Agency affords the principal officer of a Department or of a prescribed authority an opportunity to appear before the Commissioner or an authorised person, under subsection (5), the principal officer may so appear in person or a person authorised by the principal officer may so appear on behalf of the principal officer.

20 (7) Where the Agency affords a person other than the principal officer of a Department or prescribed authority an opportunity to appear before the Commissioner, or an authorised person, under subsection (5), the person may, with the approval of the Commissioner or authorised person, as the case may be, be represented by another person.

30 (8) In carrying out an investigation under this Act, the Agency is not bound by the rules of evidence but may inform itself on a matter in any manner it deems appropriate.

(9) In deciding whether it is satisfied concerning a matter under investigation, the Agency is not required to be satisfied beyond reasonable doubt but must reach its decision or opinion on the balance of probabilities.

Power to require persons to answer questions and produce documents

25.(1) The Commissioner may, by notice in writing, require a person believed to be capable of giving information relevant to an investigation under this Act to furnish, in writing, within a reasonable period specified in the notice, such information, and to produce such documents and other records, being information, documents or records relevant to the investigation, as are specified in the notice.

(2) For the purposes of an investigation under this Act, the Commissioner may, by notice in writing, require the complainant, or any other person reasonably believed by the Commissioner to be able to give information relevant to an investigation, to attend before the Commissioner or an authorised person at a time and place specified in the notice and then to answer questions and produce documents or records relevant to the investigation.

Persons not to refuse to furnish information, etc.

26.(1) Notwithstanding the provisions of any enactment, a person is not excused from furnishing any information, producing a document or other record or answering a question when required to do so under this Act on the ground that furnishing the information, producing the document or record, or answering the question:

- (a) would contravene the provisions of any other Act, would be contrary to the public interest or might tend to incriminate the person or make him or her liable to a penalty; or
- (b) would disclose legal advice, the disclosure of which would otherwise be privileged;

but the answer to the question is not admissible in evidence against the person in proceedings other than proceedings for an offence against section 48.

(2) A person is not liable to a penalty under the provisions of any other enactment by reason of furnishing information, producing a document or record or answering a question when required to do so under this Act.

Power to examine witnesses

27. The Commissioner or an authorised person may administer an oath or affirmation to a person required to attend before the Commissioner or the authorised person, as the case may be, under subsection 25(2), and may examine the person on oath or affirmation.

Power to enter premises

5 **28.(1)** For the purposes of an investigation under this Act, the Commissioner or an authorised person may, at any reasonable time of the day, enter any place occupied by a Department, a prescribed authority, a Member of Parliament, or a statutory officer, and may carry on the investigation at that place.

10 **(2)** Where, upon application being made to a Judge of the Federal Court by the Commissioner or an authorised person for the issue of a warrant under this section authorising the entry into, and search of, premises, the Judge is satisfied, by information on oath, that there are reasonable grounds for believing that there are, at the premises, documents, records or other evidence relevant to an investigation under this Act, the Judge may, by warrant, authorise a member of the staff of the Agency, subject to any conditions or restrictions the Judge sees fit to specify in the warrant, to enter and search the premises specified in the warrant and search any person found on the premises and to take possession of and remove any books, documents and other things found on the premises and reasonably believed to be relevant to the investigation.

15 **(3)** A warrant under subsection (2) shall state whether entry is authorised to be made at any time of the day or night or only during specified hours and may, if the Judge issuing the warrant thinks fit, provide that entry may be made without permission being first sought or demand first being made and authorise measures that the Judge is satisfied are necessary for that purpose.

20 **(4)** A warrant under subsection (2) must specify the period for which it is to remain in force, being a period not exceeding one month.

(5) Subsection (4) does not prevent the issue of a further warrant.

PART 5—ASSISTANCE TO WHISTLEBLOWERS

25 **Assistance to persons prejudiced by prohibited personnel practices or subjected to harassment**

29.(1) Subject to this Act, where the Agency is satisfied, either before or after completing an investigation under this Act, that a person:

(a) has been prejudiced by a prohibited personnel practice; or

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(b) has been subjected to harassment;
the Agency must provide the person with such assistance, of a kind specified in subsection (2), as it deems to be appropriate in all the circumstances.

(2) The following kinds of assistance to a person are specified for the purposes of subsection (1): 5

- (a) assistance to secure the reinstatement of the person in an office or position from which the person had been moved in consequence of the prohibited personnel practice or harassment;
- (b) assistance to secure the reallocation of the person to another office or position; 10
- (c) assistance to secure the re-engagement of the person in employment from which the person was dismissed in consequence of the prohibited personnel practice or harassment;
- (d) assistance to secure the taking of such other action with respect to the person as the Agency deems proper to put the person in the position he or she would have been in if the prohibited personnel practice or harassment had never occurred; 15
- (e) the payment to the person of a sum by way of compensation for the prejudice or harassment;
- (f) the seeking of an injunction under section 31. 20

(3) Where the person concerned made allegations, or is believed or alleged to have made allegations, of wrongdoing otherwise than to the Agency, subsection (1) does not apply to the person unless the Agency is satisfied:

- (a) that the person had reasonable grounds for believing that the allegations were true; and 25
- (b) that the allegations were true or were substantially true.

(4) The Agency must not seek to provide assistance of a kind specified in paragraph (2)(a), (b), (c) or (d) to a person unless it has obtained the consent of the person to provide assistance of that kind to the person. 30

(5) Where the Agency decides to provide assistance to a person of a kind specified in paragraphs (2)(a), (b), (c) or (d), the Agency must discuss such action with the body, authority or person responsible for the person's employment or for the employment the person was seeking, as the case may be, and seek to reach agreement with that body, authority or person with respect to the action that it would be practicable and appropriate to take to assist the person concerned, having regard to all the circumstances. 35

(6) If agreement is reached under subsection (5) but the action agreed to be taken is not taken within a reasonable time after the agreement is reached, the Agency may give to the body, authority or person concerned a notice in writing directing that the action be taken within a reasonable time specified in the notice.

5 **Compensation**

30.(1) Where the Agency is satisfied that it is proper to do so, the Agency may assess a sum to be paid to a person under paragraph 29(2)(e).

10 (2) In deciding whether to make an assessment under subsection (1), and in assessing the amount of assistance, the Agency shall have regard to the assistance (if any) of a kind referred to in paragraph 29(2)(a), (b), (c) or (d) that has been provided, or is to be provided, for the person concerned.

15 (3) Where a person cannot be reinstated, reallocated, or re-engaged in accordance with subsection 29(2), in assessing the amount of a sum to be paid to a person in accordance with subsection (1), the Agency shall have regard to:

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- (a) the salary and related entitlements to which the person would have been entitled had he or she remained in his or her employment; and
 - (b) the time period for which the person could reasonably have been expected to remain in that employment; and
 - (c) prevailing severance payments, appropriate to the field of employment in which the person was engaged, payable to a person whose term or period of employment has been terminated without the consent of the person.

(4) Where the Agency assesses a sum under subsection (1), it must notify, in writing, the person concerned and the employer or prospective employer involved in the prohibited personnel practice or harassment.

25 (5) The sum assessed under subsection (1) is recoverable by the person from the employer or prospective employer involved in the prohibited personnel practice or harassment, by action in a court of competent jurisdiction as a debt due and payable by that employer to that person.

Injunctions

31.(1) The Federal Court may, on the application of the Agency, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute:

- (a) a prohibited personnel practice in respect of a person; or
- (b) harassment of a person.

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(2) Where the Agency has given a notice under subsection 29(6), the Federal Court may, on the application of the Agency, make an order directing the person required to take the action under that notice to take that action, or such other action as the Court deems proper, within a time specified by the Court.

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(3) Where, in the opinion of the Federal Court, it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

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(4) The Federal Court may vary or rescind an injunction granted under subsection (1), (2) or (3).

(5) Where an application is made to the Federal Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, being conduct referred to in subsection (1), the Court may:

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- (a) if it is satisfied that the person has engaged in conduct of that kind – grant an injunction under subsection (1) restraining the person from engaging in conduct of that kind; or
- (b) if, in the opinion of the Court, it is desirable to do so – grant an interim injunction under subsection (3) restraining the person from engaging in conduct of that kind;

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whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind.

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(6) Where an application is made to the Federal Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, being conduct referred to in subsection (1), the Court may:

- (a) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind – grant an injunction under subsection (1) restraining the person from engaging in conduct of that kind; or

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- (b) if, in the opinion of the Court, it is desirable to do so – grant an interim injunction under subsection (3) restraining the person from engaging in conduct of that kind;

5 whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

10 (7) Where the Agency makes an application to the Federal Court for the grant of an injunction under this section, the Court shall not require the Agency or any other person, as a condition of granting an interim injunction, to give any undertaking as to damages.

(8) Where:

- (a) in a case to which subsection (7) does not apply, the Federal Court would, but for this subsection, require a person to give an undertaking as to damages or costs; and

15 (b) the Minister gives the undertaking;

the Court shall accept the undertaking by the Minister and shall not require a further undertaking from any other person.

Counselling

20 32.(1) Where the Agency is of the opinion that it is desirable to do so, the Agency may cause appropriate counselling to be provided to a person:

- (a) who has made to the Agency an allegation of a prohibited personnel practice or of harassment; or
(b) who has been concerned in, or party to, any matters investigated by the Agency under this Act.

25 (2) Counselling in accordance with subsection (1) shall occur only with the consent of the person to be counselled.

Protection

33. If it appears to the Agency that, because a person:

- 30 (a) has made to the Agency an allegation of wrongdoing, of a prohibited personnel practice or of harassment under this Act; or
(b) has appeared, is appearing or is to appear before the Commissioner or an authorised person to give information or produce documents or records; or

- (c) has furnished, has been required to furnish, or proposes to furnish, in writing, information, documents or records to the Agency; or
- (d) has assisted, is assisting or is to assist the Agency in some other manner in relation to an investigation under this Act;

the safety of the person or some other person may be prejudiced, or the person or some other person may be subjected to intimidation or harassment, the Agency may make such arrangements as are necessary to avoid prejudice to the safety of the person or to protect the person from intimidation or harassment.

PART 6—REPORTS

Agency to report offences etc.

34.(1) Where the Agency becomes of the opinion, either before or after completing an investigation under this Act, that there is evidence that a person has been guilty of an offence, and that the evidence is, in all the circumstances, of sufficient force to justify doing so, the Agency must bring the evidence to the notice of the Attorney-General.

(2) Where, within 90 days of receiving a notice under subsection (1), proceedings to prosecute the person for the offence have not commenced, the Attorney-General must, on the first sitting day of each House of the Parliament after such 90 days, table in each House a statement explaining:

- (a) why a prosecution has not commenced; and
- (b) whether, and if so, when, a prosecution will be commenced.

(3) Subject to subsection (4), where the Agency becomes of the opinion, either before or after completing an investigation under this Act, that there is evidence that a person, being a member of the federal public service, has been guilty of a breach of duty or misconduct or of a prohibited personnel practice and that the evidence is, in all the circumstances, of sufficient force to justify doing so, the Agency must bring the evidence to the notice of:

- (a) if the person is the principal officer of a Department of the Australian Public Service – the Minister administering the Department; or
- (b) if the person is an officer of a Department of the Australian Public Service but not the principal officer of the Department – the principal officer of the Department; or
- (c) if the person is the principal officer of a prescribed authority – the responsible Minister in respect of that authority; or

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- (d) if the person is an officer of a prescribed authority but not the principal officer of that authority – the principal officer of that authority; or
 - (e) if the person is the principal officer of any other part of the federal public service – the responsible Minister in respect of that part; or
 - (f) if the person is an officer of a part of the federal public service other than a part to which paragraphs (b) or (d) applies but is not the principal officer – the principal officer of that part.

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(4) Where the Agency becomes of the opinion, either before or after completing an investigation under this Act, that there is evidence that a person, being a Minister, a Member of the Parliament other than a Minister, a person holding a statutory office or a person employed under the *Members of Parliament (Staff) Act 1984*, has been guilty of a breach of duty or misconduct or of a prohibited personnel practice and that the evidence is, in all the circumstances, of sufficient force to justify doing so, the Agency must bring the evidence to the notice of:

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- (a) if the person is the Prime Minister – the Governor-General; or
 - (b) if the person is a Minister of State other than the Prime Minister – the Prime Minister; or
 - (c) if the person is a Member of the Parliament other than the Prime Minister – the Attorney-General; or
 - 20 (d) if the person is a person holding a statutory office – the responsible Minister in respect of that office; or
 - (e) if the person is a person employed under the *Members of Parliament (Staff) Act 1984* – the Member of the Parliament by whom the person is employed.

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(5) Where the Agency brings evidence to the notice of a person under subsection (1), (3) or (4), the Agency:

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- (a) may make, at the same time, any recommendations as to the action that should, in the opinion of the Agency, be taken in respect of the evidence; and
 - (b) may request the person to notify it in writing, within a reasonable time specified in the request, what action (if any) the person has taken or proposes to take in relation to the evidence and, if the person does not propose to take any action, its reasons for not taking any action; and
 - (c) may, at such time as the Agency deems appropriate, make a report in respect of the matter to the Prime Minister, or in the case of paragraph (4)(a), to the Governor-General.

(6) Where the Agency makes a report to the Prime Minister or the Governor-General as the case may be, under subsection (5), the Prime Minister or the Governor-General as the case may be, shall cause a copy of the report to be laid before each House of the Parliament within 5 sitting days of that House after receipt of the report.

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Reports

35.(1) Where, either before or after an investigation under this Act has been completed, the Agency becomes of the opinion that an allegation of:

- (a) wrongdoing; or
- (b) prohibited personnel practice; or
- (c) harassment;

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has been established, the Agency shall report accordingly to the Prime Minister.

(2) Where, either before or after an investigation under this Act has been completed, the Agency becomes of the opinion that it would be in the public interest for the nature of the investigation to be known publicly, the Agency shall report accordingly to the Prime Minister.

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(3) A report under subsection (1) or (2) may take the form of a separate report or may, if the Agency considers it appropriate to do so, be included in the next annual report under section 36.

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(4) Where the Prime Minister receives a report under subsection (1) or (2) otherwise than as part of the annual report under section 36, the Prime Minister shall cause a copy of the report to be laid before each House of the Parliament within 5 sitting days of that House after receipt of the report.

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Annual report

36.(1) The Agency shall, as soon as practicable after 30 June in each year, submit to the Prime Minister, for presentation to the Parliament, a report of the operations of the Agency during that year.

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(2) Without limiting the generality of subsection (1), a report under that subsection must set out the number and nature of complaints received during the year to which it relates, the Departments or other bodies to which they related, the nature and result of investigations carried out in that year and the action (if any) that resulted from those investigations.

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(3) The Agency may, from time to time, submit to the Prime Minister, for presentation to the Parliament, reports on its operations during part of a year.

(4) Where the Agency submits a report to the Prime Minister under subsection (1), the Prime Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after receipt of the report.

Matters affecting national security

37. Nothing in this Act prevents the Agency investigating under this Act a matter affecting or likely to affect national security.

PART 7—STAFF OF THE AGENCY

Staff

38.(1) The staff of the Agency required for the purposes of this Act shall be persons appointed or employed under the *Public Service Act 1922*.

(2) The Commissioner has all the powers of, or exercisable by, a Secretary under the *Public Service Act 1922* so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in subsection (1) as if that branch were a separate Department of the Australian Public Service.

(3) In addition to the staff referred to in subsection (1), the Agency may, on the Commonwealth's behalf, employ under written agreements such persons as the Agency thinks necessary for the performance of its functions and the exercise of its powers.

(4) The terms and conditions of employment of persons employed under subsection (3) are such as the Agency determines from time to time with the Minister's written approval.

Consultants

39.(1) The Agency may, on the Commonwealth's behalf, engage, under written agreements, persons having suitable qualifications and experience as consultants to, or to perform services for, the Agency in the performance of any of its functions or the exercise of any of its powers.

(2) The terms and conditions of engagement of persons engaged under subsection (1) are such as the Agency determines from time to time.

PART 8 - THE PARLIAMENTARY COMMITTEE

Establishment and membership

40.(1) As soon as practicable after the commencement of this Part and after the commencement of the first session of each Parliament thereafter, a joint committee of members of the Parliament, to be known as the Parliamentary Joint Committee on the Whistleblowers Protection Agency ('the Committee'), shall be appointed. 5

(2) The Committee shall consist of 10 members, of whom:

- (a) 5 shall be senators appointed by the Senate; and 10
- (b) 5 shall be members of the House of Representatives appointed by that House.

(3) The appointment of members of the Committee by a House shall be in accordance with the practice of that House relating to the appointment of members of that House to serve on joint select committees of the Parliament. 15

(4) A person is not eligible for appointment as a member of the Committee if he or she is:

- (a) a Minister; or
- (b) the President of the Senate; or 20
- (c) the Speaker of the House of Representatives; or
- (d) the Deputy President and Chairman of Committees of the Senate; or
- (e) the Deputy Speaker and Chairman of Committees of the House of Representatives. 25

(5) A member of the Committee ceases to hold office:

- (a) when the House of Representatives expires or is dissolved; or
- (b) if he or she becomes the holder of an office referred to in subsection (4); or
- (c) if he or she ceases to be a member of the House by which he or she was appointed; or 30
- (d) if he or she resigns his or her office as provided by subsection (6) or (7), as the case may be.

(6) A member appointed by the Senate may resign his or her office by writing signed and delivered to the President of the Senate. 35

(7) A member appointed by the House of Representatives may resign his or her office by writing signed and delivered to the Speaker of that House.

(8) A House may appoint one of its members to fill a vacancy among the members of the Committee appointed by that House.

Powers and proceedings

5 41. Subject to this Act, all matters relating to the Committee's powers and proceedings shall be determined by resolution of both Houses.

Duties

42. The Committee's duties are:

(a) to inquire into and report to both Houses on:

10 (i) activities of the Agency or matters connected with such activities, to which, in the Committee's opinion, the Parliament's attention should be directed; or

(ii) any matter which the Commissioner has drawn to the Committee's attention under paragraph 9(d);

15 (b) to examine any report that is prepared by the Agency, a copy of which has been laid before a House, and to report to both Houses on matters that appear in or arise out of that report and to which, in the Committee's opinion, the Parliament's attention should be directed;

20 (c) to examine each annual report that is prepared by the Agency, a copy of which has been laid before a House, and to report to both Houses on matters that appear in or arise out of that annual report and to which, in the Committee's opinion, the Parliament's attention should be directed; and

(d) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.

PART 9—MISCELLANEOUS

25 **Expense of Act**

43. The remuneration and allowances of the Agency and any other expenses occasioned by the operation of this Act shall be paid out of money appropriated by the Parliament for the purpose.

Preservation of other laws

30 44. The provisions of this Act are in addition to, and not in substitution for, any rights and remedies available to a person who has disclosed to the Agency, or elsewhere, an allegation of wrongdoing or has suffered from a prohibited personnel practice or harassment.

Protection of persons from actions

45. Where a person has suffered loss, damage or injury of any kind by reason that another person:

- (a) has made a complaint to the Agency under this Act; or
- (b) has made a statement to, answered a question put by, or furnished information, a document or a record to the Commissioner or an authorised person for the purposes of this Act;

civil proceedings do not lie against any person in respect of that loss, damage or injury unless, to the knowledge of that other person, allegations in the complaint, the statement, answer, information, document or record was false or misleading in a material particular.

Protection of Agency etc. from actions

46. Subject to section 48:

- (a) the Agency; or
- (b) the Commissioner; or
- (c) a person acting under the direction or authority of the Agency or the Commissioner;

is not liable to an action, suit or proceeding for or in relation to an act done, or omitted to be done in good faith, in exercise or purported exercise of any powers or authority conferred by this Act.

Secrecy

47.(1) In this section, "officer" means:

- (a) the Commissioner;
- (b) an Acting Commissioner;
- (c) a person who is a member of the staff of the Agency referred to in subsection 38(1) or (3);
- (d) a person engaged under subsection 39(1).

(2) Subject to this section, an officer shall not, either directly or indirectly, and either while the officer is, or after the officer ceases to be, an officer, make a record of, or divulge or communicate to any person any information acquired by the officer by reason of being an officer, being information connected with the performance of the functions of the Agency and disclosed or obtained under the provisions of this Act.

Penalty: 50 penalty units.

(3) Subsection (2) does not prevent an officer:

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- (a) from making a record of, or divulging, or communicating to, any person information acquired by the first-mentioned person in the performance of his or her duties as a officer and for purposes connected with the performance of the functions of the Agency; or
 - (b) from divulging or communicating information to a person:
 - 10 (i) if the information was furnished by an officer of the federal public service or of a prescribed authority – with the consent of the principal officer of the part of the federal public service concerned or of the prescribed authority, as the case may be, or of the responsible Minister; or
 - (ii) if the information was furnished by a person otherwise than as set out in subparagraph (i) – with the consent of that person.

15 (4) Subsection (2) does not prevent the Agency from disclosing in a report made under this Act such matters as in its opinion ought to be disclosed in the course of setting out the grounds for the conclusions and recommendations (if any) contained in the report.

20 (5) A person who is, or has been, an officer is not compellable, in any proceedings before a court (whether exercising federal jurisdiction or not), or by a person authorised by a law of the Commonwealth or of a State or Territory, or by consent of the parties, to hear, receive and examine evidence, to disclose any information acquired by him or her by reason of being or having been an officer, being information that was disclosed or obtained under the provisions of this Act.

Offences

25 48.(1) A person shall not without lawful excuse refuse or fail:

- (a) to attend before the Commissioner or an authorised person; or
- (b) to be sworn or make a declaration; or
- (c) to answer a question or produce a document or record; or
- (d) to furnish information;

30 when so required in pursuance of this Act.

Penalty: 50 penalty units.

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(2) A person shall not:

- (a) wilfully obstruct, hinder or resist the Agency or any other person in the exercise of functions or powers under this Act without lawful excuse; or
- (b) furnish information in a complaint under this Act that is, to the knowledge of the person, false or misleading in a material particular; or
- (c) furnish information to, answer a question put by, or furnish a document or record to the Commissioner or an authorised person for the purposes of this Act knowing that it is false or misleading in a material particular.

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Penalty: 50 penalty units.

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Delegation

49. The Commissioner may delegate to a member of the staff of the Agency all or any of the powers conferred on the Commissioner by this Act or any other Act other than this power of delegation.

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Regulations

50. The Governor-General may make regulations prescribing all matters required or permitted to be prescribed for the purposes of this Act or necessary or convenient to be prescribed for the purposes of this Act, including regulations prescribing penalties not exceeding a fine of 20 penalty units for offences against the regulations.

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