

Whistleblowers Protection Bill

Circulation Print

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

- Clause 1 sets out the purposes of the Bill, which are to—
- encourage and facilitate disclosures of improper conduct by public officers and public bodies; and
 - protect persons who make those disclosures and persons who may suffer reprisals in relation to those disclosures; and
 - provide for the matters disclosed to be properly investigated and dealt with.
- Clause 2 provides for the commencement of the Act. Sections 1, 2, 114 and 119 come into operation on the day the Act receives the Royal Assent. The remainder of the Act commences operation on 1 July 2001.
- Clause 3 sets out the definitions used in the Bill. The key definitions are "improper conduct" and its sub-set "corrupt conduct", "detrimental action", "public body" and "public officer", "protected disclosure" and "public interest disclosure".
- Clause 4 lists certain persons and bodies who are not considered public officers or public bodies under the Bill.

PART 2—DISCLOSURES OF IMPROPER CONDUCT

- Clause 5 sets out who may make a disclosure about improper conduct. Disclosures may be made by any member of the community who believes on reasonable grounds that a public body or public officer has engaged in, is engaging in, or proposes to engage in—

- improper conduct in their public capacity; or
- detrimental action against any person in reprisal for a protected disclosure. Clause 3 defines "detrimental action" to include action causing injury, loss or damage, intimidation or harassment, and discrimination, disadvantage or adverse treatment in a person's employment. Refer also to clause 18, which creates a criminal offence of taking detrimental action against a person in reprisal for a protected disclosure.

Clause 6 describes the persons and bodies to whom disclosures under Part 2 may be made. In order to be eligible to be considered a public interest disclosure, a disclosure must be made to the appropriate person or body as set out in the clause. It may be made orally or in writing and must be made in accordance with the prescribed procedure. The procedure will be prescribed by regulation.

Sub-clause (1) sets up the general rule that disclosures may be made to the Ombudsman or, where the disclosure relates to a member, officer or employee of a public body, that public body. This clause must be read subject to the remainder of the provision, which contains special provisions for disclosures about listed persons, being: members of Parliament, local councillors, the Chief Commissioner of Police and other members of the police force.

Clause 7 provides that disclosures may be made anonymously.

Clause 8 provides that a person may make a disclosure even if he or she cannot identify the person or body to whom or which the disclosure relates.

Clause 9 allows disclosures to be made about past conduct.

Clause 10 preserves legal professional privilege by providing that nothing in the Bill entitles a person to disclose information that is the subject of legal professional privilege.

PART 3—PROTECTION OF WHISTLEBLOWERS

Clause 11 provides that this Part only applies to a protected disclosure.

Clause 12 provides that a protected disclosure is a disclosure made in accordance with Part 2 of the Bill.

Clause 13 provides that certain further information will also be treated as a protected disclosure.

Under sub-clause (1), and subject to clause 23, where a person making a disclosure in accordance with Part 2 provides additional information about the disclosure to a person or body listed in sub-clause (2), the further information will be treated as if it were a protected disclosure for the purposes of this Part.

Clause 14 grants a person who makes a protected disclosure immunity from civil or criminal liability, or liability arising by way of administrative process, for making the protected disclosure.

Clause 15 provides that a person who makes a protected disclosure does not by doing so—

- commit an offence against section 95 of the **Constitution Act 1975** or a provision of another Act imposing confidentiality obligations; or
- breach other forms of confidentiality obligations, such as one imposed in an employment contract.

Clause 16 provides that in cases where defamation proceedings are brought against a person who makes a protected disclosure, there is a defence of absolute privilege in relation to the making of the protected disclosure.

Clause 17 provides that a person's liability for his or her own conduct is not affected by their disclosure of that conduct under this Bill.

Clause 18 creates an offence of taking detrimental action against a person in reprisal for a protected disclosure, punishable by a maximum penalty of 2 years imprisonment or 240 penalty units or both.

Sub-clause (2) describes the circumstances in which a person takes detrimental action in reprisal for a protected disclosure.

Sub-clause (3) provides that in determining whether a person takes detrimental action in reprisal, a reason referred to in sub-clause (2) need only be a substantial reason for taking the action.

- Clause 19 creates a statutory right of action in tort against a person who takes detrimental action against another in reprisal for a protected disclosure in favour of the person who has suffered the reprisal.
- Clause 20 enables a person who believes that detrimental action has been or may be taken against them to apply to the Supreme Court for an order requiring the detrimental action to be remedied, or for an injunction.
- Clause 21 sets out the powers of the Supreme Court on an application under clause 20 if satisfied that a person has taken or intends to take detrimental action in reprisal for a protected disclosure. These include the ability to make interim orders and injunctions.
- Clause 22 makes it an offence to reveal information received in the course of or as a result of a protected disclosure or the investigation of a disclosure except as authorised by the provision. The maximum penalty for the offence is 6 months imprisonment or 60 penalty units of both.

Sub-clause (1) allows such information to be disclosed for the purposes of—

- the exercise of functions under the Bill by the persons authorised by clause 6 to receive disclosures; or
- any report or recommendation to be made under the Bill; or
- annual and other reports referred to in Part 9; or
- any proceedings for certain offences under the Bill, or an offence against section 19 of the **Evidence Act 1958**; or
- any criminal or disciplinary proceedings taken against a member of the police force as a result of an investigation by the Chief Commissioner of Police under Part 7. Note that this exception must be read subject to clause 90, which deals with the Chief Commissioner's power to require answers of members of the police force in certain circumstances.

Sub-clauses (2) and (3) prohibit the disclosure of particulars likely to lead to the identification of both the person who made the protected disclosure and a person against whom a protected disclosure has been made.

Clause 23 provides that where the Ombudsman determines under Parts 4 or 8 that a disclosure is not a public interest disclosure, ongoing protection for any further disclosure of the information ceases. Sub-clause (2) makes similar provision in cases where the Deputy Ombudsman, the Chief Commissioner of Police or a public body have concluded under Part 4 that a disclosure is not a public interest disclosure and the person who made that disclosure has not requested within the time allowed to have the disclosure referred to the Ombudsman for a conclusive determination.

PART 4—DETERMINATION OF PUBLIC INTEREST DISCLOSURES

Division 1—Determination by Ombudsman of public interest disclosures

Clause 24 provides that where a person makes a disclosure to the Ombudsman in accordance with Part 2, the Ombudsman must within a reasonable time of its receipt determine whether the disclosure is a public interest disclosure. The Ombudsman is the only person authorised under the Bill to finally decide whether or not a disclosure is a public interest disclosure.

Sub-clause (2) provides that in making a determination under sub-clause (1), the Ombudsman must be satisfied that the disclosure shows or tends to show that a public officer or public body—

- has engaged, is engaging or proposes to engage in improper conduct in their public capacity; or
- has taken, is taking or proposes to take detrimental action in breach of clause 18.

Clause 25 requires the Ombudsman to notify the person who made the disclosure of his determination under clause 24. This clause does not apply where the disclosure was made anonymously.

Clause 26 requires certain complaints about members of the police force under the **Police Regulation Act 1958** to be investigated as public interest disclosures under this Bill. The provision confirms that where a public interest disclosure may also constitute a complaint under Part IVA of the **Police Regulation Act 1958**, the provisions of this Bill prevail over those in the **Police Regulation Act 1958** and the disclosure must be investigated under this Bill.

Clause 27 applies where the Ombudsman determines that a disclosure is not a public interest disclosure, yet considers that it could constitute a complaint under either the **Ombudsman Act 1973** or the **Police Regulation Act 1958**. The clause requires the Ombudsman to notify the person of their right to request within 28 days to have the matter dealt with as a complaint under those Acts. Where the person makes that request, the provision deems the disclosure to be a complaint made under the relevant Act.

Division 2—Disclosures made to public bodies

Clause 28 applies where a person has made a disclosure to a public body under Part 2. It requires the public body, within 45 days of receiving the disclosure, to consider and reach a conclusion about whether the disclosure is a public interest disclosure.

Clause 29 applies where the public body concludes that a disclosure is a public interest disclosure. It has 14 days within which to notify the person who made the disclosure and refer the disclosure to the Ombudsman for a determination. The obligation to notify the person who made the disclosure does not apply in the case of an anonymous disclosure.

Clause 30 applies where the public body concludes that a disclosure is not a public interest disclosure. It has 14 days within which to notify the person who made the disclosure and must advise the person that they have 28 days within which to request the public body to refer the disclosure to the Ombudsman for a conclusive determination. The provision does not apply where the disclosure was made anonymously.

Clause 31 places an obligation on the public body to refer a disclosure to the Ombudsman where the person asks them to do so within the 28 days provided for in clause 30.

Clause 32 provides that Division 1 applies to a disclosure referred to the Ombudsman under this Division as if it had been made to the Ombudsman (rather than to the public body). The provision also requires the Ombudsman to notify the public body within a reasonable time of his or her determination about the disclosure.

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

Clause 33 sub-clause (1) applies where a person has made a disclosure about a member of the police force to the Deputy Ombudsman under Part 2. It requires the Deputy Ombudsman, within 45 days of receiving the disclosure, to consider and reach a conclusion about whether the disclosure is a public interest disclosure. Sub-clause (2) places an identical obligation onto the Chief Commissioner of Police where a person has made a disclosure about a member of the police force to the Chief Commissioner of Police.

Clause 34 applies where the Deputy Ombudsman or Chief Commissioner of Police concludes that a disclosure is a public interest disclosure. He or she has 14 days within which to notify the person who made the disclosure and refer the disclosure to the Ombudsman for a determination. The obligation to notify the person who made the disclosure does not apply in the case of an anonymous disclosure.

Clause 35 applies where the Deputy Ombudsman or Chief Commissioner of Police concludes that a disclosure is not a public interest disclosure. He or she has 14 days within which to notify the person who made the disclosure and must advise the person that they have 28 days within which to request that the disclosure be referred to the Ombudsman for a conclusive determination. The provision does not apply where the disclosure was made anonymously.

Clause 36 places an obligation on the Deputy Ombudsman or the Chief Commissioner of Police (as the case requires) to refer a disclosure to the Ombudsman where the person asks them to do so within the 28 days provided for in clause 35.

Clause 37 provides that Division 1 applies to a disclosure referred to the Ombudsman under this Division as if it had been made to the Ombudsman (rather than to the Deputy Ombudsman or Chief

Commissioner of Police). The provision also requires the Ombudsman to notify the Deputy Ombudsman or Chief Commissioner of Police (as the case requires) within a reasonable time of his or her determination about the disclosure.

PART 5—INVESTIGATION OF PUBLIC INTEREST DISCLOSURES BY THE OMBUDSMAN

Division 1—Functions of the Ombudsman

Clause 38 sets out the Ombudsman's functions under the Bill.

Division 2—Requirement to investigate

Clause 39 provides that subject to this Division, the Ombudsman must investigate every public interest disclosure. (Clause 40 provides the Ombudsman with discretion not to investigate certain public interest disclosures. Clauses 41–44 allow the Ombudsman to refer certain matters to other persons and bodies for investigation).

Clause 40 gives the Ombudsman discretion not to investigate a disclosed matter if he or she considers that the disclosure is trivial, or frivolous or vexatious, or if the person knew about the disclosed matter for more than 12 months and fails to give a satisfactory explanation for the delay in making the disclosure. Where the Ombudsman decides under this provision not to investigate a matter, the Ombudsman must notify the person of his or her decision within a reasonable time and must also give reasons.

Clause 41 allows the Ombudsman to 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. It is intended to prescribe public bodies and office holders for the purposes of this provision by regulation.

This provision recognises that some investigations will give rise to issues that require specialist expertise beyond that ordinarily available in the Ombudsman's office. For example, complex financial allegations may be better referred to the Auditor-General for consideration. Equally, it will on occasion be clear

that the disclosure is about criminal conduct which is best investigated by Victoria Police.

The Bill envisages that disclosures referred on by the Ombudsman under this clause will not be investigated pursuant to this Bill. For example, the Auditor-General will decide whether and how to proceed in accordance with his obligations under the **Audit Act 1994**. However, the person who made the disclosure will continue to have access to the protections set out in Part 3 of the Bill, because of the Ombudsman's determination that the disclosure is a public interest disclosure.

Sub-clause (2) provides that this clause does not apply to a disclosed matter relating to a member of the police force. This is because the Bill regulates the investigation of such disclosures.

- Clause 42 gives the Ombudsman discretion to refer a disclosed matter to a public body to investigate if the matter relates to a member, officer or employee of the public body. An investigation referred to a public body under this clause is regulated by Part 6 of the Bill.
- Clause 43 gives the Ombudsman discretion to refer a disclosed matter about the Chief Commissioner of Police or any other member of the police force to the Deputy Ombudsman to investigate. The Deputy Ombudsman is required to investigate matters referred to him under this clause. Division 3 applies to these investigations and a reference to the Ombudsman in that Division is to be read as a reference to the Deputy Ombudsman.
- Clause 44 gives the Ombudsman discretion to refer certain investigations to the Chief Commissioner of Police. Disclosed matters about members of the police force other than the Chief Commissioner of Police or a Deputy or Assistant Commissioner of Police may be referred under this clause. Part 7 of the Bill regulates investigations referred under this clause.
- Clause 45 allows the Ombudsman to give any information which he has about the matter to the person or body to whom or which an investigation is referred under this Division.

Clause 46 requires the Ombudsman to notify the person who made the disclosure of the referral, unless the disclosure was made anonymously.

Division 3—Investigation by the Ombudsman

Clause 47 allows the Ombudsman to regulate his or her procedures in an investigation of a disclosed matter as he or she thinks fit.

Clause 48 enables the Ombudsman to request the Chief Commissioner of Police to make members of the police force available to assist the Ombudsman in the investigation of a disclosed matter.

Clause 49 enables the Ombudsman to request a prescribed public body to make staff members available to assist the Ombudsman in the investigation of a disclosed matter. It is intended to prescribe public bodies for the purposes of this clause by regulation.

Clause 50 requires the Ombudsman to notify in writing certain persons and bodies of his intention to conduct an investigation prior to doing so.

Where the disclosed matter relates to a public body or a public officer, sub-clause (2)(a) requires the Ombudsman to inform either the relevant Minister or the chief executive officer of the public body. Sub-clause (2)(b) to (2)(e) set out the notification requirements for disclosures about councillors and council employees. Sub-clause (2)(f) and (2)(g) set out the notification requirements for disclosures about members of the police force.

Clause 51 provides that the investigation by the Ombudsman of a disclosed matter is to be conducted in private.

Clause 52 provides that the Ombudsman is not required to hold a hearing for the purposes of an investigation into a disclosed matter.

Clause 53 gives the Ombudsman discretion to determine whether or not a person may be represented at a hearing in an investigation.

Clause 54 provides that 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. The Ombudsman has the powers of a Royal Commissioner under the **Evidence Act 1958** to send for witnesses and documents, examine witnesses under

oath and summons witnesses to appear. The Ombudsman may also take statutory declarations.

- Clause 55 gives the Ombudsman power to direct a member of the police force to give any relevant information, produce any relevant document or answer any relevant question in an investigation of a disclosed matter about a member of the police force. Clause 90 provides an identical power to the Chief Commissioner of Police. These clauses mirror the powers given to the Deputy Ombudsman and the Chief Commissioner of Police in section 86Q of the **Police Regulation Act 1958**.
- Clause 56 allows certain confidential information to be disclosed to the Ombudsman for the purposes of an investigation into a disclosed matter. The clause must be read subject to clause 10, which preserves legal professional privilege.
- Clause 57 protects cabinet deliberations and decisions, as well as the deliberations of certain committees comprised of members of Parliament from disclosure under the Bill.
- Clause 58 allows the Ombudsman or his or her authorised officers to enter and inspect premises of public bodies and public officers for the purposes of conducting an investigation at any reasonable time.
- Clause 59 applies in cases where it appears to the Ombudsman that there may be grounds for making a report adverse to a public body, public officer, local councillor or a member of the police force. Prior to making such a report, the Ombudsman must give the persons listed in paragraphs (a) to (d) the opportunity to comment on the matter.
- Clause 60 makes it an offence to obstruct the Ombudsman in the exercise of his or her powers and functions under the Bill. The maximum penalty for the offence is 2 years imprisonment or 240 penalty units or both.
- Clause 61 requires the Ombudsman to provide a person with an opportunity to be heard prior to the Ombudsman making any adverse comment about that person in a report. The Ombudsman must also fairly set out the person's defence in the report.

Division 4—Action on completion of investigation

Clause 62 requires the Deputy Ombudsman to report to the Ombudsman on an investigation of a disclosed matter in the manner that the Ombudsman determines.

Clause 63 sets out the reporting obligations of the Ombudsman and Deputy Ombudsman on the completion of an investigation of a disclosed matter. Sub-clause (2) lists the persons who must be notified about the findings of the investigation and any recommendations about the action to be taken as a result of the investigation.

Sub-clause (2)(a) applies where the investigation involves a public officer or public body. Sub-clause (2)(b) applies in the case of a local councillor. Sub-clause (2)(c) and (2)(d) apply in the case of members of the police force.

Sub-clause (3) provides that the recommendations in the report may include a recommendation that—

- the disclosed matter be referred to an appropriate authority for further consideration;
- action be taken to remedy any harm or loss arising from the conduct;
- action be taken to prevent the conduct continuing or recurring.

Clause 64 allows the Ombudsman to request the person notified under clause 63 within a specified time to advise him or her about the steps which have been, or are proposed to be, taken to give effect to a recommendation. Where no steps have been taken and none are proposed to be taken, the Ombudsman can ask for the reasons for this.

Clause 65 applies in relation to the implementation of recommendations about members of the police force. Where the Chief Commissioner of Police disagrees with a recommendation about the action to be taken as a result of an investigation, the clause requires that the matter be referred to the Police Minister, who may give certain directions.

Clause 66 allows the Ombudsman to report to Parliament about a public interest disclosure investigation where the Ombudsman considers that insufficient steps have been taken within a reasonable time to implement any recommendations made under clause 63.

Clause 67 requires the Ombudsman to inform the person who made the disclosure within a reasonable time about the result of the investigation or of any other action taken under this Part. The clause does not apply where the disclosure was made anonymously.

PART 6—INVESTIGATION OF PUBLIC INTEREST DISCLOSURES BY PUBLIC BODIES

Division 1—Establishment of procedures

Clause 68 requires a public body to establish procedures which comply with the Bill and any guidelines under clause 69—

- to facilitate the making of disclosures under Part 2; and
- for investigations of matters disclosed in public interest disclosures; and
- for the protection of persons from reprisals because of a disclosure.

Clause 69 requires the Ombudsman to prepare and publish guidelines for the procedures to be established by public bodies under clause 68.

Clause 70 requires a public body to make copies of its procedures available to each of its members, officers and employees. A copy of the procedures must also be made available for inspection by the public free of charge.

Clause 71 authorises the Ombudsman to review a public body's procedures and their implementation, and to make any recommendation he or she thinks fit as a result of that review. The clause allows the Ombudsman to send a copy of his or her recommendations to the relevant Minister where the Ombudsman considers that the public body has taken insufficient steps within a reasonable time to implement a recommendation under this clause.

Division 2—Requirement to investigate

- Clause 72 requires a public body to investigate every disclosed matter referred to it by the Ombudsman for investigation.
- Clause 73 requires a public body to refer the investigation of a disclosed matter to the Ombudsman if it considers its own investigation is being obstructed.
- Clause 74 gives the person who made the disclosure the right to request the Ombudsman to take over an investigation from a public body in certain circumstances.
- Clause 75 allows the Ombudsman to take over an investigation by a public body if he or she is not satisfied with that investigation.
- Clause 76 requires the public body to provide the Ombudsman with certain information where the Ombudsman takes over an investigation from it.
- Clause 77 sets out the powers of the Ombudsman after a referral under clause 73, a request under clause 74, or a take over under clause 75.
- Clause 78 provides that where a public body refers an investigation to the Ombudsman, it must notify the person who made the disclosure of the referral. The Ombudsman must also notify the person who made the disclosure where he or she takes over an investigation. The clause does not apply where the disclosure was made anonymously.

Division 3—Investigation by public body

- Clause 79 requires an investigation of a disclosed matter by a public body to be in accordance with the procedures established for the public body.
- Clause 80 requires a public body to provide information about the progress of its investigation into a disclosed matter at the request of the person who made the disclosure or the Ombudsman.

Division 4—Action on investigation

- Clause 81 sets out the action which the public body must take at the completion of an investigation where it finds that the

conduct which was the subject of the investigation has occurred. The clause requires the public body to—

- report the findings of the investigation to the relevant Minister or, in the case of an investigation concerning an officer or employee of a municipal council, that council; and
- take all reasonable steps to prevent the conduct from continuing or recurring. The steps to be taken may include bringing disciplinary proceedings or referring the matter to an appropriate authority for further consideration (for example, Victoria Police).

The public body may also take action to remedy any harm or loss arising from the conduct.

Clause 82 sets out a public body's reporting obligations on the completion of an investigation of a disclosed matter. The public body must notify the Ombudsman of the findings of the investigation and the steps (if any) taken under clause 81.

Where the investigation relates to an officer or employee of a municipal council the relevant municipal council must be advised of the steps (if any) taken under clause 81. In any other case, the relevant Minister must be advised.

Clause 83 requires the public body to notify the person who made the disclosure within a reasonable time of the findings of the investigation and the steps (if any) taken under clause 81. The clause does not apply where the disclosure was made anonymously.

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

Division 1—Requirement to investigate

Clause 84 requires the Chief Commissioner of Police to investigate every disclosed matter relating to a member of the police force referred to him or her by the Ombudsman for investigation.

Clause 85 gives the person who made the disclosure the right to request the Ombudsman to take over an investigation from the Chief Commissioner of Police in certain circumstances.

- Clause 86 allows the Ombudsman to take over an investigation by the Chief Commissioner of Police if the Ombudsman is not satisfied with that investigation.
- Clause 87 requires the Chief Commissioner of Police to provide the Ombudsman with certain information where the Ombudsman takes over an investigation from him or her.
- Clause 88 sets out the powers of the Ombudsman after a request under clause 85 or a take over under clause 86.
- Clause 89 provides that where the Ombudsman takes over an investigation of a disclosed matter under this Part, he or she must notify the person who made the disclosure. The clause does not apply where the disclosure was made anonymously.

Division 2—Investigation by Chief Commissioner of Police

- Clause 90 gives the Chief Commissioner of Police power to direct a member of the police force to give any relevant information, produce any relevant document or answer any relevant question in an investigation of a disclosed matter about a member of the police force. Clause 55 provides an identical power to the Ombudsman. These clauses mirror the powers given to the Deputy Ombudsman and the Chief Commissioner of Police in section 86Q of the **Police Regulation Act 1958**.
- Clause 91 requires the Chief Commissioner of Police to provide written progress reports to the Ombudsman upon request.

Division 3—Action on investigation

- Clause 92 sets out the action which the Chief Commissioner of Police must take at the completion of an investigation where he or she finds that the conduct which was the subject of the investigation has occurred. The Chief Commissioner of Police—
- must take all reasonable steps to prevent the conduct from continuing or recurring. The steps to be taken may include bringing disciplinary proceedings; and
 - may take action to remedy any harm or loss arising from the conduct.

- Clause 93 requires the Chief Commissioner of Police to notify the Ombudsman in writing about the findings of the investigation and the steps (if any) taken or proposed to be taken under clause 92.
- Clause 94 provides that where the Ombudsman disagrees with the Chief Commissioner of Police about the steps (if any) which should be taken, the matter must be referred to the Police Minister, who may give certain directions.
- Clause 95 requires the Chief Commissioner to notify the person who made the disclosure within a reasonable time of the findings of the investigation and the steps (if any) taken under clause 92. The clause does not apply where the disclosure was made anonymously.

PART 8—INVESTIGATION OF DISCLOSURES ABOUT MEMBERS OF PARLIAMENT

- Clause 96 provides that where 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.
- Clause 97 requires the Ombudsman to determine within a reasonable time of receiving a disclosure under clause 96 whether or not the disclosure is a public interest disclosure.
- Clause 98 requires the Ombudsman to notify, within a reasonable time, the President of the Legislative Council or the Speaker of the Legislative Assembly of his or her determination under clause 97.
- Clause 99 requires the Ombudsman to investigate every disclosure referred to him or her under this Part that he or she has determined is a public interest disclosure.
- Clause 100 provides that Division 3 of Part 5, except clauses 50 and 59, applies to an investigation by the Ombudsman under this Part.
- Clause 101 requires the Ombudsman to report to the President of the Legislative Council or the Speaker of the Legislative Assembly on his or her findings on an investigation under this Part.

PART 9—ANNUAL REPORTS AND OTHER REPORTS

Clause 102 sets out the annual reporting obligations of the Ombudsman under the Bill.

Clause 103 allows the Ombudsman at any time to report to the Parliament on any matter arising in relation to a public interest disclosure.

Clause 104 sets out the annual reporting obligations of a public body under the Bill.

Clause 105 sets out the annual reporting obligations of a municipal council under the Bill.

PART 10—GENERAL

Clause 106 makes it an offence to knowingly provide false information under the Bill intending that it be acted on as a public interest disclosure. The offence is punishable by a maximum penalty of 2 years imprisonment or 240 penalty units or both.

Clause 107 protects the Ombudsman, Deputy Ombudsman and officers of the Ombudsman from legal liability for actions taken in good faith under the Bill. Where it is alleged that an act was done in bad faith, civil or criminal proceedings may be brought against those persons only with leave of the Supreme Court, which must be satisfied that there is substantial ground to believe that the person to be proceeded against has acted in bad faith.

Sub-clause (4) prohibits the bringing or granting of restraining orders against the Ombudsman or Deputy Ombudsman in relation to the carrying out of responsibilities under the Bill.

Sub-clause (5) provides that the Ombudsman, Deputy Ombudsman or any of the officers of the Ombudsman may not be called to give evidence in relation to matters which have come to their knowledge in the exercise of their functions under the Bill.

This clause is modelled on section 29 of the **Ombudsman Act 1973** which protects the Ombudsman and the officers of the Ombudsman in the exercise of their functions under that Act.

Clause 108 provides that information is not admissible as evidence if it is obtained or received by a party in the course of or as a result of a public interest disclosure or its investigation.

Clause 108(2) sets out certain limited exceptions to this rule. It provides that sub-clause (1) does not apply to—

- proceedings for offences against clauses 18, 60 or 105 of the Bill or section 19 of the **Evidence Act 1958**;
- proceedings under clause 19 or 20 of the Bill;
- a criminal or disciplinary proceeding taken against a member of the police force as a result of an investigation under Part 7.

Clause 109 exempts documents held by certain persons from release under the **Freedom of Information Act 1982** to the extent that they disclose information—

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

Clause 110 states that it is the intention of clause 107 of the Bill to alter or vary section 85 of the **Constitution Act 1975**.

Clause 111 provides that if a provision of the Bill 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—

- in writing; and
- personally or by post.

Clause 112 provides a regulation making power for the Bill.

PART 11—AMENDMENT OF RELATED ACTS

Division 1—Amendment of Ombudsman Act 1973

Clause 113 amends section 29 of the **Ombudsman Act 1973** to substitute a new sub-section (3). Proposed section 29(3) re-enacts the existing section 29(3) to make similar provision to clause 107(4)

of the Bill. Section 29(3) prohibits the bringing or granting of restraining orders against the Ombudsman in relation to the carrying out of responsibilities under the **Ombudsman Act 1973**.

Clause 114 inserts a new section 29A into the **Ombudsman Act 1973**. Proposed section 29A exempts certain documents in the possession of the Ombudsman, Deputy Ombudsman or any officer of the Ombudsman from release under the **Freedom of Information Act 1982**.

Clause 115 inserts a new section 30A into the **Ombudsman Act 1973**. Proposed section 30A provides that it is the intention of section 29(3) of the **Ombudsman Act 1973** to alter or vary section 85 of the **Constitution Act 1975**.

Division 2—Amendment of the Police Regulation Act 1958

Clause 116 inserts a new paragraph into section 69(1) of the **Police Regulation Act 1958**. Proposed paragraph (ab) adds a failure to comply with a direction under clause 55 or 90 of the Bill to the list of matters which constitute a breach of discipline under the section.

Clause 117 inserts a new sub-section into the **Police Regulation Act 1958**. Proposed sub-section (2B) provides that a member of the police force has complied with the requirements of section 86L(2A) if that member discloses the conduct in accordance with Part 2 of the Bill.

Clause 118 inserts a new section 86LA into the **Police Regulation Act 1958**. Proposed section 86LA sets out a referral process to ensure that a potential public interest disclosure received as a complaint under the **Police Regulation Act 1958** will be referred to the Ombudsman for a determination about its status. The provision deems such complaints to have been made under the Bill.

Clause 119 inserts a new section 86TA into the **Police Regulation Act 1958**. Proposed section 86TA exempts certain documents in the possession of the Ombudsman, Deputy Ombudsman or any officer of the Ombudsman from release under the **Freedom of Information Act 1982**.