

PART 3—PROTECTION OF WHISTLEBLOWERS**11 Application of Part**

This Part only applies to a protected disclosure.

12 What is a protected disclosure?

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

13 Certain further information also protected

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

14 Immunity from liability

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

15 Confidentiality provisions do not apply

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

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

16 Protection from defamation action

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

17 Liability for own conduct

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

18 Protection from reprisal

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

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

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

19 Proceedings for damages for reprisal

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

20 Application for injunction or order

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

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

21 Injunction or order

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

22 Offence to reveal confidential information

- (1) A person who obtains or receives information in the course of or as a result of a protected disclosure or the investigation of a disclosed matter under this Act must not disclose that information except for the purposes of—
 - (a) the exercise of the functions under this Act of the President of the Legislative Council, the Speaker of the Legislative Assembly, the Ombudsman, the Director, the Chief Commissioner of Police or a public body; or
 - (b) any report or recommendation to be made under this Act; or
 - (c) any report referred to in Part 9; or
 - (d) any proceedings in relation to an offence against section 60 or section 106 or this section or section 19 of the **Evidence Act 1958**; or
 - (e) any criminal or disciplinary proceedings taken against a member of the police force as a result of an investigation of a disclosed matter by the Chief Commissioner of Police under Part 7.

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

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

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

- (1) If the Ombudsman makes a determination under Part 4 that a disclosure is not a public interest disclosure, this Part does not apply to—

S. 22(1)(a)
amended by
Nos 32/2004
s. 22, 63/2004
s. 30(1)(c).

- (a) any further disclosure to the Ombudsman or the public body of the subject-matter of that disclosure; or
- (b) the provision to the Ombudsman or the public body of any further information in relation to the subject-matter of the disclosure.

(2) If—

- (a) the Director, the Chief Commissioner of Police or a public body concludes under Part 4 that a disclosure is not a public interest disclosure; and
- (b) the person who made the disclosure does not, within 28 days of being notified of the conclusion, request the Director, the Chief Commissioner of Police or a public body (as the case requires) to refer the disclosure to the Ombudsman for determination—

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

(3) If the Ombudsman makes a determination under Part 8 that a disclosure is not a public interest disclosure, this Part does not apply to—

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