

## WHISTLEBLOWERS PROTECTION BILL

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### EXPLANATORY NOTE

THE purpose of this Bill is to facilitate and encourage, in the public interest, the disclosure, investigation, and correction of specified conduct or activities. Conduct and activity to which the Bill relates is that which—

- (a) Concerns the unlawful, corrupt, or unauthorised use of public funds or public resources:
- (b) Is otherwise unlawful:
- (c) Constitutes a significant risk or danger, or is injurious, to—
  - (i) Public health:
  - (ii) Public safety:
  - (iii) The environment:
  - (iv) The maintenance of the law and justice, including the prevention, investigation, and detection of offences, and the right to a fair trial.

The disclosure of information relating to such conduct or activity (in the Bill called “public interest information”) is generally known as “whistleblowing”.

The Bill affirms that public accountability and the ethic of openness are essential elements of a democratic society and for promoting the wellbeing of the community. It is similarly affirmed that informants (or “whistleblowers”) who act in accordance with the legislation should be recognised as acting responsibly and in the public interest. (*Clause 4*)

A person makes an appropriate disclosure of public interest information if that person either believes on reasonable grounds that the information is true or, although not in a position to form a belief on reasonable grounds about the truth of the information, believes that the information may be true and is of sufficient significance to justify its disclosure so that the truth may be investigated. The concomitant is that a disclosure of information is an appropriate disclosure only if made to the Whistleblowers Protection Authority constituted by the Bill. (*Clause 6*)

Any person making an appropriate disclosure of public interest information as described obtains immunity from civil and criminal proceedings. (*Clause 7*)

The Bill contains provisions for investigating complaints of unlawful discrimination by persons on the ground of protected informant status. Provisions of the Human Rights Act 1993 are applied. (*Part V*)

*Clause 1* is the Short Title. The Act is expressed to come into force on 1 July 1995.

## PART I

### PRELIMINARY PROVISIONS

*Clause 2* is the interpretation provision.

*Clause 3* provides that the Act binds the Crown.

*Clause 4* sets out the purpose of the Act, already described.

## PART II

### DISCLOSURE OF PUBLIC INTEREST INFORMATION

*Clause 5* sets out the manner in which a disclosure of public interest information is to be made, and the matters to which such disclosure may relate.

*Clause 6* defines what constitutes an appropriate disclosure of public interest information, as already described.

*Clause 7* provides immunity from civil and criminal proceedings for making an appropriate disclosure of public interest information.

*Clause 8* creates an offence of disclosing an informant's identity.

## PART III

### WHISTLEBLOWERS PROTECTION AUTHORITY

*Clause 9* provides for a Whistleblowers Protection Authority to be constituted. The Authority is designated an officer of Parliament and, accordingly, is to be appointed by the Governor-General on the recommendation of the House of Representatives.

*Clause 10* sets out the Authority's functions. These include investigating any disclosure of public interest information made to the Authority, and providing advice, counselling, and assistance to prospective or protected informants.

*Clause 11* provides for the appointment of a Deputy Authority.

*Clauses 12 to 15* relate to the term of office of the Authority. Tenure is protected, as for other officers of Parliament.

*Clause 16* prevents the Authority from holding other offices or engaging in other occupations without the consent of the Speaker of the House of Representatives.

*Clause 18* requires the Authority to make an annual report.

*Clause 19* provides for review of the operation of the Act.

## PART IV

### PROCEDURES

*Clause 20* requires the Authority to provide an advisory and counselling service to prospective and protected informants.

*Clauses 21 and 22* provide for the action to be taken by the Authority on receiving a disclosure of a public interest information, and allow no action in certain circumstances.

*Clauses 23 to 27* relate to the proceedings of the Authority. The Authority is to conduct its investigations in private, and is not required to hold hearings. However, where any report or recommendation by the Authority may adversely affect anyone, the Authority is to give that person an opportunity to be heard (in accordance with the principle of fairness and natural justice).

The Authority is given power to summon witnesses and documents, and privilege is accorded to the Authority and witnesses in relation to the Authority's proceedings.

*Clause 28* provides that where, as a result of its investigation, the Authority is of the opinion that the matter disclosed to it as public interest information has substance and also appears to be unlawful or a danger, the Authority shall refer the matter to the person to whom the investigation relates with a recommendation that appropriate corrective action be taken or to an appropriate enforcement agency.

## PART V

### REMEDIES FOR INJURY TO PROTECTED INFORMANTS

*Clause 29* makes it unlawful to discriminate against anyone, in areas consistent with those specified in the Human Rights Act 1993, on the ground, or substantially on the ground, that the other person has made or intends to make an appropriate disclosure of public interest information.

*Clause 30* provides that a complaint relating to a breach of protection of an informant may be made to the Complaints Division, which consists of Human Rights Commissioners.

*Clause 31* provides that the procedures under the Human Rights Act 1993 are to apply in relation to any complaint. The effect of this provision is that complaints may be investigated by the Complaints Division and, if appropriate, proceedings may be brought before the Complaints Review Tribunal by the Proceedings Commissioner (a Human Rights Commissioner) or, if the Proceedings Commissioner declines to do so, by the protected informant.

The Tribunal may grant remedies (including damages) where the Tribunal is satisfied on the balance of probabilities that any action of the defendant is a breach of protected informant status.

*Clause 32* extends the grounds of prohibited discrimination as applied to certain other Acts to include discrimination by reason of protected informant status.

## PART VI

### MISCELLANEOUS PROVISIONS

*Clauses 33 to 35* relate to ensuring integrity of information, including requiring the Authority and the Authority's staff to maintain secrecy in matters coming to their knowledge.

*Clauses 36 to 38* relate to delegation of functions or powers by the Authority.

*Clause 39* provides that an employer or principal is liable for the acts and omissions by that person's employees or agents except in certain cases.

*Clause 40* makes it an offence for anyone (among other things) to obstruct the Authority or any other person in the exercise of their powers under the Act, or for a person to represent falsely that he or she holds any authority under the Act.

*Clause 41* provides that the Act does not derogate from protections under other Acts relating to disclosure of information.

*Clause 42* applies the Official Information Act 1982 to the Authority.

*Clause 43* makes the Authority an Office of Parliament for the purposes of the Public Finance Act 1989.

*Clause 44* excludes the application of the Privacy Act 1993 to the Authority (which itself is protecting the privacy of protected informants).

## SCHEDULE

The *Schedule* relates to standard personnel and other matters applying to the Authority.

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## WHISTLEBLOWERS PROTECTION

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A BILL INTITULED

**An Act—**

- (a) To facilitate and encourage, in the public interest, the disclosure, investigation, and correction of unlawful, improper, or injurious conduct or activity: 5
- (b) To constitute the Whistleblowers Protection Authority and establish procedures to deal with such disclosures:
- (c) To protect persons who make appropriate disclosures of public interest information: 10
- (d) To make provision on matters incidental thereto
- BE IT ENACTED by the Parliament of New Zealand as follows:

- 1. Short Title and commencement—**(1) This Act may be cited as the Whistleblowers Protection Act 1994. 15
- (2) This Act shall come into force on the 1st day of July 1995.

PART I

PRELIMINARY PROVISIONS

- 2. Interpretation—**In this Act, unless the context otherwise requires,— 20
- “Appropriate disclosure of public interest information” means a disclosure made in accordance with section 6 of this Act: 20
- “Complaints Division” means the Complaints Division referred to in section 12 (1) of the Human Rights Act 1993: 25
- “Environment” has the same meaning as in section 2 of the Environment Act 1986:
- “Informant” means a person who makes a disclosure of public interest information under section 5 of this Act: 30
- “Protected informant status” has the meaning given to it in section 29 (3) of this Act:
- “Public funds or public resources” includes— 35
- (a) Public money within the meaning of the Public Finance Act 1977:
- (b) Public stores within the meaning of that Act:

(c) Money and stores of a Government agency within the meaning of that Act:

(d) Money and stores of a local authority within the meaning of that Act;—

5 and also includes like money and stores of—

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

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

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

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

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

“Public interest information” means information relating to conduct or activity of the kind specified in section 5 (1) of this Act:

20 “Whistleblowers Protection Authority” or “Authority” means the Whistleblowers Protection Authority constituted under section 9 of this Act.

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

25 **4. Purpose of Act**—(1) The purpose of this Act is to facilitate and encourage, in the public interest, the disclosure, investigation, and correction of any conduct or activity that—

(a) Concerns the unlawful, corrupt, or unauthorised use of public funds or public resources:

(b) Is otherwise unlawful:

30 (c) Constitutes a significant risk or danger, or is injurious, to—

(i) Public health:

(ii) Public safety:

(iii) The environment:

35 (iv) The maintenance of the law and justice, including the prevention, investigation, and detection of offences, and the right to a fair trial.

(2) The purpose of this Act is further to affirm—

40 (a) That public accountability and the ethic of openness are essential elements of a democratic society and for promoting the wellbeing of the community:

- (b) That informants who act in accordance with this Act should be recognised as acting responsibly and in the public interest.
- (3) For attaining its purpose, this Act—
- (a) Constitutes a Whistleblowers Protection Authority and establishes procedures to facilitate and encourage disclosure of public interest information: 5
- (b) Provides for such disclosures to be properly investigated and dealt with:
- (c) Provides for the protection of persons (commonly known as whistleblowers) who make disclosures of public interest information to the Authority: 10
- (d) Provides for remedies for such persons who encounter discrimination or harassment for disclosing public interest information. 15

## PART II

### DISCLOSURE OF PUBLIC INTEREST INFORMATION

#### **5. Making disclosure of public interest information—**

- (1) Public interest information is information which relates to any conduct or activity, whether in the public sector or in the private sector, that— 20
- (a) Concerns the unlawful, corrupt, or unauthorised use of public funds or public resources:
- (b) Is otherwise unlawful:
- (c) Constitutes a significant risk or danger, or is injurious, 25  
to—
- (i) Public health:
- (ii) Public safety:
- (iii) The environment:
- (iv) The maintenance of the law and justice, 30  
including the prevention, investigation, and detection of offences, and the right to a fair trial.
- (2) Any person may disclose public interest information to the Authority.
- (3) A person may disclose to the Authority— 35
- (a) Information the disclosure of which could properly be withheld in accordance with—
- (i) The Official Information Act 1982; or
- (ii) The Local Government Official Information and Meetings Act 1987: 40
- (b) Personal information the disclosure of which would breach the Privacy Act 1993 or a code of practice issued under section 63 of that Act:

(c) Information the disclosure of which another enactment prohibits or regulates:

(d) Information the disclosure of which would breach a confidence, unless the disclosure would be in the public interest.

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(4) A person may disclose public interest information to the Authority either orally or in writing.

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(5) If a person discloses public interest information orally, that person shall put the information in writing as soon as is practicable.

(6) The Authority shall assist any person who wishes to disclose public interest information to the Authority to put the disclosure in writing.

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Cf. 1975, No. 9, s. 16; 1993, No. 28, ss. 34, 68; Whistleblowers Protection Act 1993 (South Australia), s. 4 (1)

**6. Appropriate disclosures of public interest information**—A person discloses public interest information appropriately if, and only if,—

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(a) The person—

(i) Believes on reasonable grounds that the information is true; or

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(ii) Is not in a position to form a belief on reasonable grounds about the truth of the information but believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated; and

(b) The person discloses that information to the Authority.

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Cf. Whistleblowers Protection Act 1993 (South Australia), s. 5 (2)

**7. Immunity for appropriate disclosures of public interest information**—No person who makes an appropriate disclosure of public interest information shall be subject to civil or criminal proceedings concerning that disclosure.

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Cf. Whistleblowers Protection Act 1993 (South Australia), ss. 5 (1), 10

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**8. Offence to disclose identity of informant**—Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$2,000 who discloses, or who attempts or conspires to disclose, to any person any information which could reasonably be expected to



identify any person who has disclosed public interest information appropriately under this Act without that person's consent.

Cf. 1985, No. 120, s. 140 (1)

### PART III

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#### WHISTLEBLOWERS PROTECTION AUTHORITY

#### **9. Whistleblowers Protection Authority constituted—**

(1) There shall be appointed, as an officer of Parliament, a Whistleblowers Protection Authority.

(2) Subject to **section 15** of this Act, the Authority shall be appointed by the Governor-General on the recommendation of the House of Representatives. 10

(3) The Authority shall be a corporation sole with perpetual succession and a seal of office, and shall have and may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity. 15

Cf. 1986, No. 127, s. 4; 1993, No. 28, s. 12

**10. Functions of Authority—**(1) The functions of the Authority shall be— 20

(a) To investigate any disclosure of public interest information made to the Authority:

(b) To provide advice, counselling, and assistance to prospective informants and protected informants:

(c) To monitor developments in relation to disclosures of public interest information: 25

(d) To report to the House of Representatives or, as the case may be, the Prime Minister from time to time on any matter relating to the disclosure of public interest information, including the need for, or desirability of, taking legislative, administrative, or other action to give better protection to informants: 30

(e) To make public statements in relation to disclosures of public interest information:

(f) To review the operation of this Act as required by **section 19** of this Act: 35

(g) To do anything incidental or conducive to the performance of the preceding functions:

(h) To exercise and perform such other functions, powers, and duties as are conferred or imposed on the Authority by or under this Act or any other enactment. 40

**11. Deputy Authority**—(1) There may from time to time be appointed a deputy to the person appointed as the Whistleblowers Protection Authority.

5 (2) The Deputy Authority shall be appointed in the same manner as the Authority, and sections 12 to 16 of this Act shall apply to the Deputy Authority in the same manner as they apply to the Authority.

10 (3) Subject to the control of the Authority, the Deputy Authority shall have and may exercise all the powers, duties, and functions of the Authority under this Act or any other enactment.

15 (4) On the occurrence from any cause of a vacancy in the office of the Authority (whether by reason of death, resignation, or otherwise), and in the case of the absence from duty of the Authority (from whatever cause arising), and so long as any such vacancy or absence continues, the Deputy Authority shall have and may exercise all the powers, duties, and functions of the Authority.

20 (5) The fact that the Deputy Authority exercises any power, duty, or function of the Authority shall be conclusive evidence of the Deputy Authority's authority to do so.

(6) Subject to this Act, the Deputy Authority shall be entitled to all the protections, privileges, and immunities of the Authority.

25 Cf. 1993, No. 28, s. 15

**12. Term of office**—(1) Except as otherwise provided in this Act, the Authority shall hold office for a term of 5 years.

(2) The Authority shall be eligible for reappointment from time to time.

30 Cf. 1986, No. 127, s. 6 (1)

**13. Continuation in office after term expires**—

35 (1) Where the term for which a person who has been appointed as the Authority expires, that person, unless sooner vacating or removed from office under section 14 of this Act, shall continue to hold office, by virtue of the appointment for the term that has expired, until—

- (a) That person is reappointed; or
- (b) A successor to that person is appointed.

(2) The person appointed as the Authority—

40 (a) May at any time resign his or her office by notice in writing addressed to the Speaker of the House of Representatives, or to the Prime Minister if there is

no Speaker or Deputy Speaker or if both the Speaker and Deputy Speaker are absent from New Zealand:  
 (b) Shall resign the office on attaining the age of 72 years.

Cf. 1986, No. 127, s. 6 (2); 1991, No. 126 s. 9 (3); 1993, No. 28, s. 17

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**14. Removal or suspension from office**—(1) Subject to subsection (2) of this section, the person appointed as the Authority may be removed or suspended from office only by the Governor-General, upon an address from the House of Representatives, for disability, bankruptcy, neglect of duty, or misconduct.

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(2) At any time when Parliament is not in session, the person appointed as the Authority may be suspended from office by the Governor-General in Council for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Governor-General in Council; but any such suspension shall not continue in force beyond the end of the 24th sitting day of the next ensuing session of Parliament and the salary of the Authority shall continue to be paid notwithstanding the suspension.

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Cf. 1975, No. 9, s. 6; 1986, No. 127, s. 8; 1988, No. 2, s. 7

**15. Filling of vacancy**—(1) If the person appointed as the Authority dies, or resigns from office, or is removed from office, the vacancy thereby created shall be filled as soon as practicable in accordance with this section.

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(2) Subject to subsection (3) of this section, a vacancy in the office of Authority shall be filled by the appointment of a successor by the Governor-General on the recommendation of the House of Representatives.

(3) If—

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(a) A vacancy occurs while Parliament is not in session or exists at the close of a session; and

(b) The House of Representatives has not recommended an appointment to fill the vacancy,—

the vacancy, at any time before the commencement of the next ensuing session of Parliament, may be filled by the appointment of a successor by the Governor-General in Council.

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(4) Any appointment made under subsection (3) of this section shall lapse and the office shall again become vacant unless, before the end of the 24th sitting day of the House of Representatives following the date of the appointment, the House confirms the appointment.

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(5) **Subsection (1)** of this section does not apply where the Authority is a Judge; but nothing in this subsection shall limit the application of that subsection where the Authority ceases to be a Judge during that person's term of office as the Authority.

5 Cf. 1975, No. 9, s. 7; 1986, No. 127, s. 8; 1991, No. 126, s. 11; 1993, No. 28, s. 18

10 **16. Holding of other offices**—(1) The Authority shall not be capable of being a member of Parliament or of a local authority, and shall not, without the approval of the Speaker of the House of Representatives in each particular case, hold any office of trust or profit or engage in any occupation for reward outside the duties of the Authority's office.

15 (2) The appointment of a Judge as the Authority, or service by a Judge as the Authority, does not affect that person's tenure of his or her judicial office or his or her rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges as a Judge (including those in relation to superannuation), and, for all purposes, that person's service as the Authority shall be taken to be service as a Judge.

20 Cf. 1991, No. 126, ss. 8, 10; 1993, No. 28, s. 19

**17. Further provisions relating to Authority**—The provisions of the **Schedule** to this Act apply to the Authority and the Authority's affairs.

*Reporting and Review Provisions*

25 **18. Annual report**—(1) Without limiting the right of the Authority to report at any other time, the Authority shall in each year make a report to the House of Representatives on the performance of the Authority's functions under this Act.

30 (2) The report shall include information on the number and kinds of disclosures of public interest information made to the Authority.

(3) The annual report shall be laid before the House of Representatives in accordance with section 39 of the Public Finance Act 1989.

35 **19. Review of operation of Act**—As soon as practicable after the expiry of the period of 3 years beginning on the commencement of this section, and then at intervals of not more than 5 years, the Authority shall—

(a) Review the operation of this Act since—

- (i) The date of the commencement of this section (in the case of the first review carried out under this paragraph); or
  - (ii) The date of the last review carried out under this paragraph (in the case of every subsequent review); and 5
  - (b) Consider whether any amendments to this Act are necessary or desirable; and
  - (c) Report the Authority's findings to the House of Representatives. 10
- Cf. 1990, No. 72, s. 12; 1993, No. 28, s. 26

#### PART IV

#### PROCEDURES

##### *Advice and Counselling*

**20. Advisory and counselling service**—The Authority shall provide advice, counselling, and assistance on the following matters to any person who discloses, or who notifies the Authority that he or she is considering disclosing, public interest information under this Act: 15

- (a) The kinds of disclosures that may be made under this Act: 20
- (b) The manner and form in which public interest information may be disclosed under this Act:
- (c) How particular information disclosed to the Authority may be disclosed under this Act and what consequences disclosure may have: 25
- (d) The protections and remedies available under this Act or otherwise in relation to discrimination or harassment:
- (e) The operation of this Act in any respect.

##### *Investigation by Authority*

**21. Action on receiving disclosure of public interest information**—On receiving a disclosure of public interest information under section 5 of this Act, the Authority shall— 30

- (a) Investigate the disclosure of public interest information; or
- (b) Decide, in accordance with section 22 of this Act, to take no action on the disclosure. 35

Cf. 1993, No. 28, s. 70

**22. Authority may decide to take no action on disclosure of public interest information in certain circumstances**—(1) The Authority may decide to take no 40

action or, as the case may require, no further action, on any disclosure of public interest information if, but only if,—

- 5 (a) The Authority considers that under the law there is an adequate remedy, right of appeal, or agency for investigation to which it would have been reasonable for the person disclosing the public interest information to resort; or
- 10 (b) The Authority considers that the information disclosed is already publicly known or concerns a matter of public policy or debate on which diverse opinions may reasonably or sincerely be held, unless in the circumstances of the particular case there are other considerations which render it desirable in the public interest for the Authority to investigate the matter; or
- 15 (c) The length of time that has elapsed between the date when the subject-matter of the disclosure of the public interest information arose and the date when the disclosure was made is such that an investigation of the information is no longer practicable or desirable; or
- 20 (d) The subject-matter of the information is trivial; or
- (e) The making of the disclosure is frivolous or vexatious or is not made in good faith; or
- 25 (f) The information is insufficient to allow an investigation to proceed.
- (2) In any case where the Authority decides to take no action or, as the case may be, no further action, on any disclosure of public interest information, the Authority shall inform the person who made the disclosure of that decision and the reasons for it.
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Cf. 1975, No. 9, s. 17; 1977, No. 49, s. 35; 1981, No. 127, s. 3; 1982, No. 156, s. 9 (1); 1993, No. 28, s. 71

#### *Proceedings*

35 **23. Proceedings of Authority**—(1) Before investigating any matter under **this Part** of this Act, the Authority shall inform the person to whom the investigation relates of the Authority's intention to make the investigation.

(2) Every investigation by the Authority under **this Part** of this Act shall be conducted in private.

40 (3) The Authority may hear or obtain information from such persons as the Authority thinks fit, and may make such inquiries as the Authority thinks fit.

(4) It shall not be necessary for the Authority to hold any hearing, and no person shall be entitled as of right to be heard by the Authority:

Provided that if at any time during the course of an investigation it appears to the Authority that there may be sufficient grounds for making any report or recommendation that may adversely affect that person, the Authority shall give that person an opportunity to be heard. 5

(5) Subject to the provisions of this Act, the Authority may regulate the Authority's procedure in such manner as the Authority thinks fit. 10

Cf. 1975, No. 9, s. 18; 1993, No. 28, s. 90

**24. Evidence**—(1) The Authority may summon before him or her and examine on oath any person who in the Authority's opinion is able to give information relevant to an investigation being conducted by the Authority under **this Part** of this Act. 15

(2) The Authority may administer an oath to any person summoned pursuant to **subsection (1)** of this section.

(3) Every examination by the Authority under **subsection (1)** of this section shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury). 20

(4) The Authority may from time to time, by notice in writing, require any person who in the Authority's opinion is able to give information relevant to an investigation being conducted by the Authority under **this Part** of this Act to furnish such information, and to produce such documents or things in the possession or under the control of that person, as in the opinion of the Authority are relevant to the subject-matter of the investigation or inquiry. 25 30

(5) Where the attendance of any person is required by the Authority under this section, the person shall be entitled to the same fees, allowances, and expenses as if the person were a witness in a court and, for the purpose,—

(a) The provisions of any regulations in that behalf under the Summary Proceedings Act 1957 shall apply accordingly; and 35

(b) The Authority shall have the powers of a court under any such regulations to fix or disallow, in whole or in part, or to increase, any amounts payable under the regulations. 40

Cf. 1977, No. 49, s. 73 (1), (2), (7); 1991, No. 126, ss. 24, 26 (5)

**25. Protection and privileges of witnesses, etc.—**

(1) Except as provided in **section 35** of this Act, every person shall have the same privileges in relation to the giving of information to, the answering of questions put by, and the production of documents and things to, the Authority or any employee of the Authority as witnesses have in any court.

(2) No person shall be liable to prosecution for an offence against any enactment, other than **section 40** of this Act, by reason of that person's compliance with any requirement of the Authority or any employee of the Authority under **section 24** of this Act.

Cf. 1975, No. 9, s. 19 (5), (7); 1977, No. 49, s. 73 (3), (6); 1991, No. 126, s. 26 (1), (4); 1993, No. 28, s. 94

**26. Disclosures of information, etc.—**(1) Subject to **subsection (2)** of this section and to **section 25** of this Act, any person who is bound by the provisions of any enactment to maintain secrecy in relation to, or not to disclose, any matter may be required to supply any information to, or answer any question put by, the Authority in relation to that matter, or to produce to the Authority any document or thing relating to it, notwithstanding that compliance with that requirement would otherwise be in breach of the obligation of secrecy or non-disclosure.

(2) Compliance with a requirement of the Authority (being a requirement made pursuant to **subsection (1)** of this section) is not a breach of the relevant obligation of secrecy or non-disclosure or of the enactment by which that obligation is imposed.

Cf. 1975, No. 9, s. 19 (3), (4); 1987, No. 8, s. 24 (1); 1991, No. 126, s. 26 (2), (3); 1993, No. 28, s. 95 (1), (2)

**27. Proceedings privileged—**(1) This section applies to—

- (a) The Authority; and
- (b) Every person engaged or employed in connection with the work of the Authority.

(2) Subject to **subsection (3)** of this section,—

(a) No proceedings, civil or criminal, shall lie against any person to whom this section applies for anything he or she may do or report or say in the course of the exercise or intended exercise of his or her duties under this Act, unless it is shown that he or she acted in bad faith:

(b) No person to whom this section applies shall be required to give evidence in any court, or in any proceedings



of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions.

(3) Nothing in **subsection (2)** of this section applies in respect of proceedings for— 5

(a) An offence against section 78 or section 78A (1) or section 105 or section 105A or section 105B of the Crimes Act 1961; or

(b) The offence of conspiring to commit an offence against section 78 or section 78A (1) or section 105 or section 105A or section 105B of the Crimes Act 1961. 10

(4) Anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by or proceedings before the Authority under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a court. 15

(5) For the purposes of clause 3 of Part II of the First Schedule to the Defamation Act 1992, any report made under this Act by the Authority shall be deemed to be an official report made by a person holding an inquiry under an Act of Parliament. 20

Cf. 1975, No. 9, s. 26; 1982, No. 164, s. 5; 1991, No. 126, s. 29; 1993, No. 28, s. 96

**28. Procedure after investigation**—(1) The provisions of this section shall apply in every case where, after making any investigation under this Act, the Authority is of the opinion that the matter disclosed as public interest information to the Authority— 25

(a) Has substance; and

(b) Appears to— 30

(i) Concern the unlawful, corrupt, or unauthorised use of public funds or public resources; or

(ii) Be otherwise unlawful; or

(iii) Constitute a significant risk or danger, or be injurious, to— 35

(A) Public health; or

(B) Public safety; or

(C) The environment; or

(D) The maintenance of the law and justice, including the prevention, investigation, and detection or offences, and the right to a fair trial. 40

(2) The Authority shall, where appropriate, refer the matter—

(a) To the person to whom the investigation relates with a recommendation that appropriate corrective action be taken:

5 (b) To an appropriate enforcement agency for investigation and, where that agency is so empowered, decision whether to institute proceedings.

(3) In any case where the Authority has referred the matter in accordance with **paragraph (a) of subsection (2)** of this section, the Authority may request the person to notify the Authority, within a specified time, of the steps, if any, that that person proposes to take to give effect to the Authority's recommendation.

10 (4) If within a reasonable time no action is taken that seems to the Authority to be adequate and appropriate, the Authority may report to the Prime Minister accordingly, and may thereafter make such report to the House of Representatives on the matter as the Authority thinks fit.

(5) The Authority shall, in any case to which this section relates, inform the person who made the disclosure of public interest information of the result of the Authority's investigation.

(6) In **subsection (2) (b)** of this section, the term "appropriate enforcement agency" includes (but without limitation)—

- 25 (a) The Solicitor-General;
- (b) The State Services Commissioner appointed under section 3 of the State Sector Act 1988;
- (c) The Audit Office (as defined by section 14 of the Public Finance Act 1977);
- (d) The Commissioner of Police;
- 30 (e) The Police Complaints Authority established by section 4 of the Police Complaints Authority Act 1988, in relation to information alleging Police misconduct;
- (f) The Director of the Serious Fraud Office within the meaning of the Serious Fraud Office Act 1990;
- 35 (g) The Public Health Commission established by section 27 of the Health and Disability Services Act 1993;
- (h) The Director-General of Health, in relation to information relevant to the administration of—
  - 40 (i) The Toxic Substances Act 1979; or
  - (ii) The Medicines Act 1981; or
  - (iii) The Food Act 1981:
- (i) The Director of Mental Health appointed in terms of section 91 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, in relation to

- information relevant to the administration of that Act:
- (j) The Director-General of Agriculture and Fisheries or, as the case may require, the Registrar of the Pesticides Board, in relation to information relevant to the administration of the Pesticides Act 1979: 5
  - (k) The Director-General defined by the Biosecurity Act 1993 as responsible for the time being for the administration of that Act:
  - (l) The Hazards Control Commission established by section 346 of the Resource Management Act 1991: 10
  - (m) The Parliamentary Commissioner for the Environment appointed under section 4 of the Environment Act 1986:
  - (n) The Secretary for Justice, in relation to information relevant to the administration of— 15
    - (i) The Penal Institutions Act 1954:
    - (ii) The Criminal Justice Act 1985:
  - (o) The Director-General of Social Welfare, in relation to information relevant to the administration of the Children, Young Persons, and Their Families Act 1989: 20
  - (p) The Secretary of the Department defined by the Health and Safety in Employment Act 1992 as responsible for the administration of that Act: 25
  - (q) The Secretary of Labour,—
    - (i) As Chief Inspector of Explosives under the Explosives Act 1957:
    - (ii) As Chief Inspector of Dangerous Goods under the Dangerous Goods Act 1974: 30
  - (r) The Transport Accident Investigation Commission established by section 3 of the Transport Accident Investigation Commission Act 1990:
  - (s) The Civil Aviation Authority of New Zealand established by section 72A of the Civil Aviation Act 1990 (as inserted by section 31 of the Civil Aviation Amendment Act 1992) or, as the case may require, the Director of Civil Aviation appointed under section 72I of that Act (as so inserted): 35
  - (t) The General Manager of the Aviation Security Service appointed under section 72L of the Civil Aviation Act 1990 (as inserted by section 14 of the Civil Aviation Amendment Act 1993) or, as the case may require, an authorised provider of aviation security service under Part VIII of that Act: 40 45

- 5 (u) The Land Transport Safety Authority of New Zealand established by section 15 of the Land Transport Act 1993 or, as the case may require, the Director of Land Transport Safety appointed under section 24 of that Act;
- 10 (v) The Maritime Safety Authority of New Zealand established by section 3 of the Maritime Transport Act 1993 or, as the case may require, the Director of Maritime Safety appointed under section 13 of that Act.
- Cf. 1975, No. 9, s. 22

PART V

REMEDIES FOR INJURY TO PROTECTED INFORMANTS

- 15 **29. Unlawful discrimination**—(1) Subject to subsection (2) of this section, it shall be unlawful for any person to subject a person to any detriment, or to treat or threaten to treat that other person less favourably, or to harass that person, on the ground, or substantially on the ground, that the other person has made or intends to make an appropriate disclosure of public interest information.
- 20 (2) **Subsection (1)** of this section applies in relation to any of the following areas:
- (a) The making of an application for employment:
  - (b) Employment, which term includes unpaid work:

25 (c) Participation in, or the making of an application for participation in, a partnership:

  - (d) Membership, or the making of an application for membership, of an industrial union or professional or trade association:

30 (e) Access to any approval, authorisation, or qualification:

  - (f) Vocational training, or the making of an application for vocational training:
  - (g) Access to places, vehicles, and facilities:
  - (h) Access to goods and services:

35 (i) Access to land, housing, or other accommodation:

  - (j) Education.
- 40 (3) The status of being a person who has made an appropriate disclosure of public interest information (in this Act referred to as protected informant status) shall be regarded as if it were a prohibited ground of discrimination within the meaning of the Human Rights Act 1993; and the provisions of

Part II of that Act shall apply accordingly with the necessary modifications.

Cf. 1993, No. 82, ss. 62 (3), 63 (2)

**30. Complaints relating to breach of protection of informant**—Any informant may make a complaint to the Complaints Division that— 5

- (a) His or her identity has been disclosed; and that
- (b) He or she is being or has been subjected to detriment or less favourable treatment or harassment in any of the areas described in **section 29** of this Act,— 10

on the ground, or substantially on the ground, that he or she has made or intends to make an appropriate disclosure of public interest information.

**31. Procedures under Human Rights Act 1993 to apply to complaints**—Where any informant makes a complaint in terms of **section 30** of this Act, Parts III, IV, V, and VII of the Human Rights Act 1993, so far as applicable and with all necessary modifications, shall apply in relation to that complaint as if it were a complaint under that Act. 15

Cf. 1956, No. 65, s. 22F 20

*Extension of Grounds of Prohibited Discrimination*

**32. Application of provisions relating to Human Rights Act 1993**—Every reference to a complaint under the Human Rights Act 1993 shall be construed in the following enactments (which relate to choice of procedure where circumstances give rise to a personal grievance by an employee) as including a reference to a complaint under **section 30** of this Act: 25

- (a) The Police Act 1958: section 95:
- (b) The State-Owned Enterprises Act 1986: section 6: 30
- (c) The New Zealand Symphony Orchestra Act 1988: section 10:
- (d) The Broadcasting Act 1989: clause 7 of the First Schedule:
- (e) The Employment Contracts Act 1991: sections 26 (e) and 39. 35

(2) Every reference to the Human Rights Act 1993 in section 12 (5) of the Residential Tenancies Act 1986 (which relates to the letting of residential premises) shall be construed as if it included a reference to protected informant status.

(3) The grounds of prohibited discrimination specified in section 28 (1) of the Employment Contracts Act 1991 shall be deemed to include protected informant status. 40

PART VI

MISCELLANEOUS PROVISIONS

*Integrity of Information*

5     **33. Authority and staff to maintain secrecy**—(1) Every person to whom **section 27** of this Act applies shall maintain secrecy in respect of all matters that come to that person's knowledge in the exercise of that person's functions under this Act.

10     (2) Notwithstanding anything in **subsection (1)** of this section, the Authority may disclose such matters as in the Authority's opinion ought to be disclosed for the purposes of an investigation under this Act.

   (3) The power conferred by **subsection (2)** of this section shall not extend to—

15     (a) The disclosure of any information which would be likely to prejudice—

      (i) The security or defence of New Zealand; or

      (ii) Any interest protected by **section 7** of the Official Information Act 1982; or

20     (iii) The prevention, investigation, or detection of offences; or

      (iv) The safety of any person; or

   (b) Any information, answer, document, or thing obtained by the Authority by reason only of compliance with a requirement made pursuant to **section 24 (1)** of this Act.

25     Cf. 1975, No. 9, s. 21 (2), (4), (5); 1987, No. 8, s. 24 (2); 1991, No. 126, s. 30; 1993, No. 28, s. 116

30     **34. Corrupt use of official information**—Every person to whom **section 27** of this Act applies shall be deemed for the purposes of sections 105 and 105A of the Crimes Act 1961 to be an official.

   Cf. 1977, No. 49, s. 77; 1987, No. 8, s. 25 (1); 1991, No. 126, s. 31; 1993, No. 28, s. 118

35     **35. Exclusion of public interest immunity**—The rule of law which authorises or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest shall not apply in respect of—

40     (a) Any investigation by or proceedings before the Authority under this Act; or

(b) Any application under section 4 (1) of the Judicature Amendment Act 1972 for the review of any decision under this Act;—

but not so as to give any party any information that he or she would not, apart from this section, be entitled to. 5

Cf. 1982, No. 156, s. 11; 1987, No. 174, s. 9; 1991, No. 126, s. 28

### *Delegations*

#### **36. Delegation of functions or powers of Authority—**

(1) The Authority may from time to time delegate to any person holding office under the Authority all or any of the Authority's functions and powers under this Act or any other Act. 10

(2) Every delegation under this section shall be in writing.

(3) No delegation under this section shall include the power to delegate under this section. 15

(4) The power of the Authority to delegate under this section does not limit any power of delegation conferred on the Authority by any other Act.

(5) Subject to any general or special directions given or conditions imposed by the Authority, the person to whom any functions or powers are delegated under this section may exercise any functions or powers so delegated to that person in the same manner and with the same effect as if they had been conferred on that person directly by this section and not by delegation. 20  
25

(6) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation. 30

(7) Any delegation under this section may be made—

(a) To a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices:

(b) Subject to such restrictions and conditions as the Authority thinks fit: 35

(c) Either generally or in relation to any particular case or class of cases.

(8) No such delegation shall affect or prevent the exercise of any function or power by the Authority, nor shall any such 40

delegation affect the responsibility of the Authority for the actions of any person acting under the delegation.

Cf. 1975, No. 9, s. 28; 1991, No. 126, s. 33 (1)–(8); 1993, No. 28, s. 12

5       **37. Delegation to produce evidence of authority**—Any person purporting to exercise any power of the Authority by virtue of a delegation under **section 36** of this Act shall, when required to do so, produce evidence of that person’s authority to exercise the power.

10       Cf. 1991, No. 126, s. 33 (9); 1993, No. 28, s. 122

**38. Revocation of delegations**—(1) Every delegation under **section 36** of this Act shall be revocable in writing at will.

15       (2) Any such delegation, until it is revoked, shall continue in force according to its tenor, notwithstanding that the Authority by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of the Authority.

Cf. 1991, No. 126, s. 34; 1993, No. 28, s. 123

*Liability and Offences*

20       **39. Liability of employer and principals**—(1) Subject to **subsection (3)** of this section, anything done or omitted by a person as the employee of another person shall, for the purposes of this Act, be treated as done or omitted by that other person as well as by the first-mentioned person, whether  
25       or not it was done with that other person’s knowledge or approval.

30       (2) Anything done or omitted by a person as the agent of another person shall, for the purposes of this Act, be treated as done or omitted by that other person as well as by the first-mentioned person, unless it is done or omitted without that other person’s express or implied authority, precedent or subsequent.

35       (3) In proceedings under this Act against any person in respect of an act alleged to have been done by an employee of that person, it shall be a defence for that person to prove that he or she or it took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing as an employee of that person acts of that description.

Cf. 1977, No. 49, s. 33; 1993, No. 28, s. 126



**40. Offences**—Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$2,000 who,—

- (a) Without reasonable excuse, obstructs, hinders, or resists the Authority or any other person in the exercise of their powers under this Act: 5
- (b) Without reasonable excuse, refuses or fails to comply with any lawful requirement of the Authority or any other person under this Act:
- (c) Makes any statement or gives any information to the Authority or any other person exercising powers under this Act, knowing that the statement or information is false or misleading: 10
- (d) Represents directly or indirectly that he or she holds any authority under this Act when he or she does not hold that authority. 15

Cf. 1975, No. 9, s. 30; 1991, No. 126, s. 35; 1993, No. 28, s. 127

#### *Savings*

**41. Act not to derogate from protection under other Acts**—This Act is in addition to, and does not derogate from, any privilege, protection, or immunity existing apart from this Act under which information may be disclosed without civil or criminal liability. 20

Cf. Whistleblowers Protection Act 1993 (South Australia), s. 11 25

#### *Amendments*

**42. Official Information Act 1982 amended**—The First Schedule to the Official Information Act 1982 is hereby amended by inserting, in its appropriate alphabetical order, the following item: 30

“Whistleblowers Protection Authority”.

**43. Public Finance Act 1989 amended**—Section 2 (1) of the Public Finance Act 1989 is hereby amended by repealing the definition of the term “Office of Parliament” (as substituted by section 129 (1) of the Privacy Act 1993), and substituting the following definition: 35

“‘Office of Parliament’ means the Parliamentary Commissioner for the Environment (and that Commissioner’s office), the Office of Ombudsmen, the Whistleblowers Protection Authority (and that 40

Authority's office), and the Audit Office (including the Audit Department):”.

5     **44. Privacy Act 1993 amended**—Section 2 (1) of the Privacy Act 1993 is hereby amended by inserting in paragraph (b) of the definition of the term “agency”, after subparagraph (ix), the following new subparagraph:  
          “(ixa) The Whistleblowers Protection Authority;  
          or”.

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## Section 17

## SCHEDULE

## PROVISIONS APPLYING IN RESPECT OF AUTHORITY

**1. Employment of experts**—(1) The Authority may, as and when the need arises, appoint any person who, in the Authority's opinion, possesses expert knowledge or is otherwise able to assist in connection with the exercise by the Authority of the Authority's functions to make such inquiries or to conduct such research or to make such reports or to render such other services as may be necessary for the efficient performance by the Authority of the Authority's functions.

(2) The Authority shall pay persons appointed by the Authority under this clause, for services rendered by them, fees or commission or both at such rates as the Authority thinks fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Authority.

**2. Staff**—(1) Subject to the provisions of this clause, the Authority may appoint such employees (including acting or temporary or casual employees) as may be necessary for the efficient carrying out of the Authority's functions, powers, and duties under this Act.

(2) The Authority, in making an appointment under this clause, shall give preference to the person who is best suited to the position.

(3) The number of persons that may be appointed under this clause, whether generally or in respect of any specified duties or class of duties, shall from time to time be determined by the Speaker of the House of Representatives.

(4) Subject to subclause (5) of this clause, employees appointed under this clause shall be employed on such terms and conditions of employment as the Authority from time to time determines.

(5) The Authority shall—

(a) Before entering into a collective employment contract in relation to all or any of the Authority's employees appointed under this clause, consult with the State Services Commissioner with respect to the terms and conditions of employment to be included in the collective employment contract; and

(b) From time to time consult with the State Services Commissioner in relation to the terms and conditions of employment applying to those employees appointed under this clause who are not covered by a collective employment contract.

**3. Salaries and allowances**—(1) There shall be paid to the Authority and the Deputy Authority—

(a) A salary at such rate as the Higher Salaries Commission from time to time determines; and

(b) Such allowances as are from time to time determined by the Higher Salaries Commission.

(2) Subject to the Higher Salaries Commission Act 1977, any determination made under subclause (1) of this clause may be made so as to come into force on a date to be specified for that purpose in the determination, being the date of the making of the determination, or any other date, whether before or after the date of the making of the determination.

(3) Every determination made under subclause (1) of this clause in respect of which no date is specified as provided in subclause (2) of this

SCHEDULE—*continued*

PROVISIONS APPLYING IN RESPECT OF AUTHORITY—*continued*

clause shall come into force on the date of the making of the determination.

(4) There shall also be paid to the Authority and the Deputy Authority, in respect of time spent in travelling in the exercise of the Authority's or, as the case may be, the Deputy Authority's functions, travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the Authority and the Deputy Authority were members of a statutory Board and the travelling were in the service of the statutory Board.

**4. Superannuation or retiring allowances**—(1) For the purpose of providing superannuation or retiring allowances for the Authority, the Deputy Authority, and for any of the employees of the Authority, the Authority may, out of the funds of the Authority, make payments to or subsidise any superannuation scheme that is registered under the Superannuation Schemes Act 1989.

(2) Notwithstanding anything in this Act, any person who, immediately before being appointed as the Authority or the Deputy Authority or, as the case may be, becoming an employee of the Authority, is a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to hold office as the Authority or the Deputy Authority or, as the case may be, to be an employee of the Authority; and that Act shall apply to that person in all respects as if that person's service as the Authority or the Deputy Authority or, as the case may be, as such an employee were Government service.

(3) Subject to the Government Superannuation Fund Act 1956, nothing in subclause (2) of this clause entitles any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

(4) For the purpose of applying the Government Superannuation Fund Act 1956, in accordance with subclause (2) of this clause, to a person who holds office as the Authority or the Deputy Authority or, as the case may be, is in the service of the Authority as an employee and (in any such case) is a contributor to the Government Superannuation Fund, the term "controlling authority", in relation to any such person, means the Authority.

**5. Application of certain Acts to Authority and staff**—No person shall be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of that person's appointment as the Authority, or the Deputy Authority, or a person appointed under clause 1 or clause 2 of this Schedule.

**6. Services for Authority**—The Crown, acting through any Department, may from time to time, at the request of the Authority, execute any work or enter into any arrangements for the execution or provision by the Department for the Authority of any work or service, or

SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF AUTHORITY—*continued*

for the supply to the Authority of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.

**7. Seal**—The Authority's seal of office shall be judicially noticed in all courts and for all purposes.

**8. Exemption from income tax**—The income of the office of Authority shall be exempt from income tax.