Attachment A: Responses to Questions on Notice

Senator Shoebridge: *If an authorised officer has had five separate complaints put before them, perhaps from five different employees, can the authorised officer, on the fifth one, have reference to facts outside of that complaint in order to satisfy themselves that it's significant? Or—on one reading of the bill—are they trapped to look at the one instance in front of them? Which is it? Can they look at all five? On one reading of the bill they can't; they're looking at them all discretely, and they might fall into error if they look at the other four to give context to No. 5.*

The department considers that an authorised officer would generally be required to consider related public interest disclosures or other relevant, extrinsic information when deciding whether to allocate a disclosure under proposed new section 43, including when considering (in accordance with proposed new subsection 29(2A)) whether a new disclosure relates to conduct that:

- is of such a significant nature that it would undermine public confidence in an agency (or agencies), or
- has other significant implications for an agency (or agencies).

In recommending that personal work-related conduct be excluded from the scope of 'disclosable conduct' under the PID Act, the Moss Review recognised that, in some circumstances, personal work-related conduct can be symptomatic of a larger, systemic concern, and that these concerns should attract the protection of the PID Act. The Moss Review stated that authorised officers should be granted discretion to treat such conduct as a disclosure if they consider it relates to a systemic issue.

The Bill implements this approach through paragraph 29(2A)(b). Conduct that is of such a significant nature that it would undermine public confidence in an agency, or has other significant implications for an agency, will include conduct of systemic concern. However, it is not limited only to conduct that is systemic in nature, but would also capture conduct that might otherwise be considered significant. For example, a single instance of alleged conduct may be sufficiently serious to reach the 'significant' threshold, particularly if it affects or relates to the management or control of the agency, or involves serious criminal conduct. That alleged conduct may not be systemic in the sense that it forms part of a pattern of conduct (whether or not the instances of conduct are coordinated in any way), but it may nevertheless still be of a significant nature or have significant implications for an agency. The department also notes that 'significant implications' as used in subparagraph 29(2A)(b)(ii) is the same language used in section 1317AADA of the *Corporations Act 2001* in relation to personal work-related grievances under the private sector whistleblowing scheme.

Furthermore, the inclusion of subparagraph 29(2A)(b)(i), regarding conduct of such a significant nature that it would undermine public confidence in an agency, reflects the PID Act's role as an integrity framework for the public service. Public officials occupy a position of trust, and it is essential that they provide the public with confidence in relation to their conduct. Where a public official engages in wrongdoing, their conduct has the potential to have broader implications as to the confidence the community has in an agency, or Commonwealth agencies more broadly. Subparagraph 29(2A)(b)(i) is intended to reflect this position to ensure that where the conduct of a public official would undermine public confidence in an agency, it would be within the scope of the PID framework.

Proposed new subsection 43(3) provides that an authorised officer must allocate the handling of a disclosure to one or more agencies, unless subsection 43(4) applies. Subsection 43(4) provides that an

authorised officer must decide not to allocate a disclosure if they are satisfied on reasonable grounds that:

- there is no reasonable basis on which the disclosure could be considered an internal disclosure, or
- the conduct disclosed would be more appropriately investigated under another law or power.

Proposed new paragraph 43(5)(b) provides that the authorised officer must have regard to any other matters the authorised officer considers relevant. Proposed new subsection 43(10) of the Bill provides that, for the purposes of making a decision about the allocation of a disclosure, the authorised officer may obtain information from such persons, and make such inquiries, as the authorised officer thinks fit. This is also the position under subsection 43(4) of the current PID Act.

In combination, these provisions:

- allow authorised officers to make inquiries for the purposes of making a decision about whether and where to allocate a disclosure under the Act, including be satisfied on reasonable grounds that an exemption to personal work-related conduct applies that would otherwise bring such conduct within the scope of 'disclosable conduct' under the Act, and
- require authorised officers to consider all matters that they consider relevant, which reflects the usual administrative law requirement for decision-makers to take into account to all relevant considerations and not take into account irrelevant considerations.

Senator Scarr: *In their submission, Maurice Blackburn referred to some of the issues that could arise in the waiver of confidentiality of discloser identity, in particular where someone under an immense deal of personal pressure and stress maybe confides in a trusted work colleague and that could inadvertently lead to them compromising the ability to keep the ability to keep their identity confidential. Can I ask you to take on notice Maurice Blackburn's suggestion and provide a response to their suggestion in that respect?*

In their submission, Maurice Blackburn suggested the inclusion of an additional provision to proposed paragraph 20(3)(e) of the Bill to give guidance or examples of when a discloser may be found to have acted inconsistently with his or her identity being kept confidential. Maurice Blackburn suggested that such a provision should require a court to consider the following factors when determining this matter:

- whether the discloser has identified themselves in a public forum such as a group meeting or group communication
- whether the discloser subjectively intended to reveal their identity, and
- whether the discloser revealed their identity in circumstances of assumed or requested confidentiality.

New paragraph 20(3)(e) implements recommendation 19 of the Moss Review, that the PID Act be amended to recognise implied consent as an exemption to the secrecy offence relating to identifying information. The Moss Review considered that this exemption should be included as the intention of the offence is to protect the discloser from harm.

The intention of new paragraph 20(3)(e) is to capture instances where the discloser intends for their identity as a discloser be revealed. It is not intended to capture instances where a discloser may have identified themselves as such to a colleague on a confidential basis, but did not otherwise intend to publicise this matter.

The department considers that the paragraph as drafted achieves this intention. The ordinary meanings of ‘confidential’ and confidentiality includes the conveying or imparting of information to a third party on an expectation, understanding or undertaking that it will be kept secret (either entirely, or within a group of trusted persons), such as to a trusted work colleague. The requirement in proposed new paragraph 20(3)(e) that the person has ‘acted in a way that is inconsistent with keeping that person’s identity confidential’ would therefore require evidence that a person has acted in a manner inconsistent with the maintenance of confidentiality by others who may know or become aware of their identity. As such, the department does not consider it necessary to amend the Bill to prescribe factors that must or may be considered when determining whether a person has acted inconsistently with the maintenance of the confidentiality of their identity. However, the department considers that further information could be included in the explanatory memorandum to clarify the intended operation of this provision.

Senator Scarr: *Finally, I've gone through the Law Council of Australia submission. As always, this committee takes very seriously the recommendations and suggestions from the Law Council of Australia. Can I ask you to take on notice the recommendations which they've made and to provide a response to those recommendations, if you could? I am happy for you to do it in short form. Instead of me running through all of the recommendations—some of which we have already canvassed—I just want to make sure that this process includes a comprehensive response to the recommendations that have been made and suggestion from the Law Council of Australia. Can you take that on notice, Ms Moran?*

The Law Council of Australia in their submission to the Senate and Legal Constitutional Affairs Committee inquiry to the Public Interest Disclosure Amendment (Review) Bill 2022 (PID Bill) raised a number of recommendations for the Committee's consideration. The department's response to the recommendations is as follows:

Review mechanism

Law Council of Australia recommendation:

- **Proposed section 82A of the PIDA be re-worded so as to require periodic reviews of the PIDA, with the first review to occur three years after the commencement of the review clause, with subsequent reviews to occur every five years thereafter.**

Proposed section 82A of the PID Bill provides for a single review of the PID Act 5-years following the commencement of the reforms. The department notes the recommendation of the Law Council of Australia to re-word proposed section 82A to require periodic reviews of the PID Act, with the first review to occur three years after the commencement of the review clause, with subsequent reviews to occur every five years thereafter.

The department considers that a single statutory review 5 years following commencement of the PID Bill is appropriate to:

- allow time for the collection of reliable data to inform an effective review – the Moss Review observed that 'after two and a half years of operation there [was] only limited information about the PID Act and the regime it seeks to establish'[1]
- provide flexibility for future review timeframes to ensure regard to new research and developments can be had at appropriate times, and
- provide a better opportunity to align with future reviews of the private sector whistleblower scheme.

Generally, amendments would be expected to be made to the PID Act following a statutory review, which would provide an opportunity to set a future statutory review date. The department can reconsider the approach to the review mechanism as part of the broader, second stage of reform of the PID Act, which will involve the redrafting of the Act as a whole.

Access to legal and other professional assistance

Law Council of Australia recommendations:

- **The PIDAR Bill include a provision that obliges the Australian Government to publish and to maintain a list of lawyers with security clearance to ensure that individuals who**

[1] Mr Philip Moss AM, *Review of the Public Interest Disclosure Act 2013* (Cth) (15 July 2016), paragraph 43.

are contemplating making disclosures of secret information may more easily seek out appropriate legal counsel

- **In the alternative, consideration be given to promulgating a Public Interest Disclosure Rule under section 83 of the PIDA that requires the publication and maintenance of a list of security-cleared lawyers**;
- **As an alternative to the publication of a list of security-cleared lawyers:**
    - **the PIDAR Bill include a provision that implements recommendation 24 of the Moss Review and removes the requirement for a lawyer to have security clearance to advise individuals on the disclosure of 'national security' or 'other protective security classification' information; or**
    - **consideration be given to limiting the need for lawyers to hold security clearance to advise whistleblowers on situations involving material that is categorised as either 'secret' or 'top secret' under the Protective Security Policy Framework**
- **If the requirement in paragraph 4(b) of the table in subsection 29(1) of the PIDA (the security-clearance requirement for lawyers) is not repealed, the following amendments should be made:**
    - **the terms 'has a national security or other protective security classification' should be removed from paragraph 4(c) in the table in s 29(1) of the PIDA and replaced with the phrase 'has a security classification'; and - a new definition clause should be inserted into section 8 of the PIDA ('Definitions'), to read as follows: 'security classification has the meaning given by section 90.5 of the Criminal Code Act 1995 (Cth)';**
- **Consideration be given to including within the PIDAR Bill a provision to grant the Inspector-General of Intelligence and Security (IGIS) powers to authorise a person to seek discrete legal advice on certain matters concerning 'intelligence information', subject, if necessary, to prescribed conditions being met**
- **Alternatively, consideration be given to the enactment of some other mechanism that would enable members of the Australian intelligence community to obtain independent legal advice in circumstances involving 'intelligence information'**
- **Section 67 of the PIDA be amended to limit that offence provision to the misuse or wrongful disclosure by legal practitioners of:**
    - **'security classified' information for the purposes of section 90.5 of the Criminal Code Act 1995 (Cth) (Criminal Code), or**
    - **information that may cause significant harm to national security**
- **the PIDA be amended to permit disclosures for the purposes of seeking professional advice about the PIDA.**

The department notes that the Law Council of Australia provided a number of recommendations focused on improving access for disclosers to legal and other professional assistance.

The department intends to consider recommendation 24 of the Moss Review, being to permit the disclosure of security-classified information (other than intelligence information) to any practicing lawyer for the purpose of obtaining legal advice about a public interest disclosure, in the context of providing advice to Government on the second stage of reforms to the PID Act.

Any proposal to introduce a standing authorisation for a class of persons to access classified information without holding a security clearance would require careful consideration and consultation.

It is ordinarily a matter for an individual to select and retain their own legal representation. The department will consult agencies, including the Office of the Commonwealth Ombudsman or the Office of the Inspector-General of Intelligence and Security, on whether it would be practicable and

appropriate to develop and maintain a list of particular security-cleared lawyers that potential disclosers could be directed towards on an administrative basis. The department notes the Moss Review's conclusion that, where necessary, the Inspector-General of Intelligence and Security can assist a member of the intelligence community to seek authorisation from the relevant intelligence agency to disclose intelligence information to a lawyer.[2]

Secrecy offence

Law Council of Australia recommendations:

- **Concerns raised in the Moss Review about the 'secrecy' offence may be better addressed by amending the existing section 65 of the PIDA rather than removing the protection altogether**
- **The following amendments to existing section 65 of the PIDA be considered:**
    - **renaming the section 'prohibited disclosure or use'**
    - **adding a public-interest exception in subsection 65(2) of the PIDA, and**
    - **adding any other specific exceptions that are reasonably necessary to ensure that a protected disclosure can be investigated by the most appropriate agency or agencies.**

Consistent with recommendation 16 of the Moss Review, the Bill removes the secrecy offence at section 65 of the PID Act to support better information sharing between agencies in relation to a disclosure. The Moss Review noted that the secrecy offence unnecessarily limits agencies' ability to respond to alleged wrongdoing and disclosures, and has impeded the ability of senior management to access information about the performance of their agency.

The Bill does not affect other, existing protections for sensitive information relating to disclosures. In particular, the Bill does not amend or repeal the existing offence against use or disclosure of identifying information, contained in section 20 of the PID Act, in recognition that confidentiality as to the identity of disclosers is an important part of the protections afforded to disclosers under the Act. Similarly, the Bill does not affect the application of secrecy provisions in other legislation.

The Bill also expands the protections against reprisal action in the PID Act, and in particular extends protections to a range of non-employment-related harms that could arise where information about a person's disclosure improperly disclosed, such as harassment or intimidation, injury or harm (including psychological harm), damage to a person's property, reputation, or business or financial position, or any other damage to a person. Importantly, the protections against reprisal action in the PID Act are not limited to reprisal actions taken by a person's employer; the protections apply in relation to reprisal action taken by any person.

The Bill also identifies instances in which information sharing between agencies is explicitly authorised. This amendment does not require an agency to share information. Rather, it is for agencies to determine when the sharing of information may be relevant and appropriate to be shared.

The need for any further amendments to information sharing arrangements under the PID Act can be considered as part of broader reforms.

[2] Mr Philip Moss AM, *Review of the Public Interest Disclosure Act 2013* (Cth) (15 July 2016), paragraph 144.

Extension of investigation time periods and external disclosures

Law Council of Australia recommendations:

- **A provision be inserted into section 52 of the PIDA that, in the absence of a good reason for extending the 90-day period to investigate disclosures, an extension of time will not be granted**
- **There be a statutory requirement for the discloser, first, to be notified by the principal officer of any application for, or consideration of, an extension of the investigative time limit; and, second, to be given the opportunity to make representations (if necessary pseudonymised or anonymised) concerning the extension of the time limit**
- **A non-exhaustive list of considerations relevant to time-extension applications be inserted into section 52 of the PIDA to ensure consistent decision-making with any such list to include, at a minimum, the following factors:**
    - **the reasons for the delay in completing the investigation**
    - **the nature and complexity of the investigation**
    - **the number of witnesses identified and their availability**
    - **action already taken by the agency**
    - **what further action is necessary to complete the investigation and the likely timeframe in which future investigative action will be completed**
    - **the number of extensions previously granted and the reasons why extensions were sought and granted on those occasions**
    - **any representations made by the discloser, and**
    - **any other matter the decision-maker considers relevant**
- **As an alternative to the proposed amendment of the time-extension provisions, the following sub-paragraph (or equivalent provision with the same effect) be inserted into paragraph (c) of item 2 in the table in subsection 26(1) of the PIDA:**
    - ***(vi) more than 90 days have passed since the disclosure investigation relating to the internal disclosure being conducted under Part 3 commenced and***
        - ***1. an extension of the 90-day investigation period has been granted under section 52, and***
        - ***2. the discloser believes on reasonable grounds that the investigative action taken has been inadequate***
- **Paragraph (c) of item 2 in the table in subsection 26(1) of the PIDA be amended to provide that an external disclosure may be made if a whistleblower:**
    - **has provided their name and contact details in connection with making the disclosure, and**
    - **has not, within 28 days of making the disclosure, been provided with a notice confirming that an allocation decision has been made in accordance with subsections 44(4) or 44A(3) of the PIDA.**

A public interest disclosure should be allocated and investigated within a reasonable period of time.

Consistent with existing subsection 43(5) of the PID Act, subsection 43(11) of the PID Bill provides that an Authorised Officer must use their 'best endeavours' to make an allocation decision within 14 days from the earlier of the following dates:

- if no previous decision has been made about the allocation—the day the disclosure is made or given to an authorised officer;
- if the decision is made following the reconsideration of a previous decision about the allocation in response to a recommendation by the Ombudsman or the IGIS under

section 55—the day the principal officer of the recipient agency receives the recommendation under that section.

Subsection 52(1) of the PID Act provides that an investigation must be completed within 90 days after the relevant disclosure was allocated to the agency concerned.

The Law Council of Australia has made a number of recommendations aimed at improving the transparency and accountability of agencies requests for extension of investigation time periods.

The Ombudsman's Agency Guide to the PID Act provides that in considering a request for an extension of time, the Ombudsman will consider a range of factors including:

- if the additional time requested is reasonably necessary to ensure that the disclosure is properly investigated
- the availability of witnesses
- the complexity of the investigation
- the action already taken to progress it
- whether there have been any unreasonable or unexplained delays on the part of the agency, and
- any views expressed by the discloser about the requested extension.

These matters align closely with those that the Law Council of Australia has recommended be included in the Act, including the views (if any) of the discloser. The department does not consider it to be necessary to prescribe the matters that the Ombudsman must or may consider, when considering whether it is 'appropriate' to grant an extension of time, given:

- the Ombudsman has issued clear guidance on this issue, and
- the matters listed in the Ombudsman's guidance are, at face value, relevant considerations that the Ombudsman may take into account when considering whether it is 'appropriate' to grant an extension.

The department notes that, under the PID Act, if an extension is granted:

- the Ombudsman or the IGIS, as appropriate, must inform the discloser and give reasons for the extension (s 52(5)), and
- the principal officer of the handling agency must also let the discloser know, as soon as reasonably practicable after the extension is granted, about the progress of the investigation (s 52(5)).

The department notes that there would be a number of matters to be worked through in relation to the Law Council of Australia's recommendations to amend subsection 26(1) of the PID Act to permit a discloser to make an external disclosure in circumstances where:

- an allocation decision has not been made within 28 days of a disclosure being made, or
- the Ombudsman has granted an extension of time for an investigation, on the basis that the Ombudsman considers that such an extension is appropriate, but where the discloser believes on reasonable grounds that the investigative action taken has been inadequate.

The department considers that amendments to the external disclosure framework, including those recommended by the Law Council of Australia, would benefit from careful and holistic consideration, and broad consultation, to ensure they appropriately balance competing interests—including ensuring that allocation decisions are made in a timely fashion, that disclosures can be properly investigated where appropriate, and that the risk of inadvertent harm as a result of the external disclosure of protected information is minimised. As such, the department would propose to consider the external

disclosure mechanism under the PID Act as part of the broader, second stage of reforms to ensure that it is fit for purpose.

Principal Officer's discretion not to investigate a disclosure because it is not 'serious' in paragraph 48(1)(c)

Law Council of Australia recommendation:

- **Paragraph 48(1)(c) of the PIDA be repealed as a superfluous provision following the removal of forms of disclosable wrongdoing that are not 'serious' from the scope of the PIDA.**

The department acknowledges the recommendation of the Law Council of Australia to repeal the discretion contained in paragraph 48(1)(c) of the PID Act for a Principal Officer not to investigate a disclosure because it is not 'serious'.

Section 48 of the PID Act sets out a number of grounds on which a principal officer may exercise their discretion not to investigate a disclosure under the PID Act. Paragraph 48(1)(c) provides that the principal officer may decide not investigate a disclosure if the information does not, to any extent, concern serious disclosable conduct recognises that there are other frameworks better suited to dealing with conduct other integrity-related wrongdoing in line with the PID Bill.

The PID Act applies to a wide range of conduct and does not set a seriousness threshold for disclosable conduct to be a 'public interest disclosure'. Although a number of amendments contained in the Bill are designed to focus the Act on integrity-related wrongdoing, it will remain the case that a discloser could make a public interest disclosure about matters that are objectively not 'serious', but that are also not 'frivolous or vexatious' (which is a separate basis on which an agency may decide to not investigate a disclosure under s 47(1)(d)). While the question of whether a particular disclosure concerns serious disclosable conduct will depend on all of the facts and circumstances of a case, the following are illustrative examples of conduct that would fall within the definition of 'disclosable conduct' but that may not be 'serious':

- conduct that contravenes a law of the Commonwealth, a State or a Territory (s 29(1), table item 1), where the contravention is accidental and of a minor nature in the sense that no tangible harm has resulted; or
- conduct that results in the wastage of relevant money (s 29(1), table item 7(a)), where the quantum involved is small and there is no suggestion of an improper motive or benefit.

As such, the department considers that the discretion contained in paragraph 48(1)(c) for a Principal Officer not to investigate a disclosure because it is not 'serious' remains appropriate.

For completeness, the department notes that, the whistleblower protections continue to apply to disclosures which are not investigated as a result of a principal officer exercising their discretion under section 48. This is appropriate, to ensure that whistleblowers are protected for disclosing wrongdoing (in line with the PID Act) even if a disclosure may not always warrant investigation under the PID Act.

Application of the PID Act to employees under the *Members of Parliament (Staff) Act 1984* (Cth)

Law Council of Australia recommendation:

- **Employees under the *Members of Parliament (Staff) Act 1984* (Cth) remain as 'public officials' for the purposes of the PIDA.**

The Bill implements recommendation 26 of the Moss Review, to clarify the intended scope of the Act in relation to parliamentarians and persons employed under the *Members of Parliament (Staff) Act*

1984 (MoP(S) Act). The Government supports appropriate protections for parliamentary staff in relation to disclosures of wrongdoing, including serious integrity wrongdoing such as corruption, fraud or serious misconduct, and has taken the first step towards delivering this outcome through protections provided in the *National Anti-Corruption Commission Act 2022* for disclosures of corrupt conduct. Parliamentary staff who report a corruption issue to the National Anti-Corruption Commission will have robust protections against reprisal or detriment.

The PID Act was not originally designed or intended to capture allegations of wrongdoing by or about members of parliament or their staff members. However, as noted by the 2016 Moss Review, despite this clear policy intention the current drafting of the PID Act provides ambiguity as:

- Ministers exercising statutory powers may be public officials,
- people employed under the *Members of Parliament (Staff) Act 1984* (MoP(S) Act) could be contracted service providers, and
- paragraph 31(b)(i) is drafted too narrowly to exclude Ministers or staff members from the operation of the PID Act entirely.

The Moss Review consequently recommended that:

- Recommendation 26: the PID Act be amended to clarify that its provisions do not apply to reports about alleged wrongdoing by Senators, Members and their staff, or allegations made by them
- Recommendation 27: consideration be given to extending the PID Act to parliamentarians and their staff if an independent body with the power to scrutinise their conduct were established

The amendments contained in the Bill give effect to recommendation 26 of the Moss Review.

Extending the public sector whistleblowing framework to parliamentarians and their staff would require careful consideration of a number of issues including, for example:

- which agency would be appropriate to receive and investigate allocations relating to parliamentarians and their staff noting that, as presently drafted, parliamentarians and their staff would not belong to any ‘agency’ within the meaning of the Act, with the result that there may be no obligation for any person to investigate a disclosure relating to a parliamentarian or their staff; and
- whether the Act should expressly preserve or abrogate parliamentary privilege, as failing to address this may create legal uncertainty about the Act’s interaction with parliamentary privilege.

The Government will consider whether other protections are appropriate for parliamentary staff who report misconduct in the context of implementing relevant recommendations in *Set the standard: report on the Independent Review into Commonwealth Parliamentary Workplaces*, in particular the establishment of the Independent Parliamentary Standards Commission, and the second stage of reforms to the PID Act.

Attachment B: Additional information on the alignment of language between the *Corporations Act 2001* and PID Act

The department notes recommendation 5 of the joint submission from the Human Rights Law Centre, Transparency International Australia and the Centre for Governance and Public Policy at Griffith University, to replace proposed sections 29(2A) and 29A of the PID Bill (which remove 'personal work-related conduct' from the scope of disclosable conduct under the PID Act) with provisions that replicate the drafting of section 1317AADA of the *Corporations Act 2001* (Corporations Act).

Consistent with the department's evidence to the Committee, the department considers that the Bill, as drafted, will operate solely to exclude 'personal work-related conduct' from the scope of 'disclosable conduct'. This is consistent with recommendation 5 of the Review, and the discussion at paragraphs 71 and 72 of that Review, and is consistent with operation of section 1317AADA of the Corporations Act.

The structure and drafting of the private sector whistleblowing scheme in the Corporations Act differs to that of the PID Act, however, and those differences necessarily flow through to how proposed new ss 29(2A) and 29A are drafted.

Part 2 of the PID Act is drafted around the concept of a '*public interest disclosure*', being a disclosure that contains information that tends to show 'one or more instances of disclosable conduct' (see, for example, table item 1 of 26(1)(c)). 'Disclosable conduct' is then defined in section 29, which sets out the kinds of disclosable conduct. This approach recognises that a public interest disclosure may contain information concerning multiple instances or types of disclosable conduct. By continuing to take a conduct-based approach, proposed new subsection 29(2A) would therefore operate only to exclude instances of conduct that constitute personal work-related conduct. Other instances of conduct that are part of a disclosure would still be considered a public interest disclosure for the purposes of the PID Act. This is consistent with the Moss Review's views (paragraph 71) that, where a disclosure includes both an element of personal work-related conduct, as well as an element of other wrongdoing, the latter element should remain subject to the PID Act.

Conversely, the Corporations Act applies to a 'disclosure of information' that concerns or indicates particular types of wrongdoing (see, for example, s 1317AA(4) or (5)). The Corporations Act uses the language of '**to the extent that** the information disclosed concerns a personal work-related grievance'. This information-based approach, and the focus on the character of the information as concerning a 'grievance', is appropriate within the context of the Corporations Act, as it does not use a concept of 'one or more instances of conduct' (only a 'disclosure of information').

The department would not recommend seeking to directly replicate the language from the Corporations Act in the PID Act, in this Bill. As noted above, the difference in language reflects the differing structure of the two schemes, but would deliver the same practical outcome. Seeking to align the language between the two schemes would require extensive consideration to ensure that the blending of an information-based and conduct-based approach in the same Part of the PID Act did not produce unintended consequences, or introduce additional complexity or ambiguity to the scheme. The second stage of reforms to the PID Act, which will involve the redrafting of the Act, would provide an opportunity to consider foundational drafting issues and the closer alignment of the text of the two Acts.