



21 December 2022

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Secretary

Inquiry into the Public Interest Disclosure Amendment (Review) Bill 2022

The Centre for Public Integrity welcomes the opportunity to make a submission to the Committee's inquiry into the Public Interest Disclosure Amendment (Review) Bill 2022.

The Centre for Public Integrity is a non-partisan think tank led by integrity experts from academia, public policy, and the judiciary. We welcome the Public Interest Disclosure Amendment (Review) Bill 2022, the stated purpose of which is to deliver priority reforms to the existing whistleblowing framework under the *Public Interest Disclosure Act 2013* (Cth) (**PID Act**).

Our submission is concerned solely with one priority reform not addressed by the Bill in its current form: the need for an independent whistleblower protection authority. As our submission sets out, this is a vital reform that in our view should be part of any Bill seeking to deliver priority reforms to the PID Act.

We would be pleased to be of any further assistance the Committee may require.

Yours sincerely,

Dr Catherine Williams
Research Director
The Centre for Public Integrity

The need for an independent whistleblower protection authority

The need for an independent whistleblower protection authority in Australia was first identified almost 20 years ago, in the 1994 *"In the Public Interest"* report by the Senate Select Committee on Public Interest Whistleblowing. This report described the need for a "small but powerful independent agency" which would be responsible for receiving and registering public interest disclosures, arranging for their investigation, ensuring the protection of disclosers, delivering a national education program and both making and overseeing the implementation of recommendations relating to its role.¹

The 2017 report of the Parliamentary Joint Committee on Corporations and Financial Services, entitled *"Whistleblower protections"*, subsequently confirmed the need for such an authority. The Committee recommended that there be established a whistleblower protection authority to cover both the public and private sectors, and perform the following functions:

- act as a clearing house for whistleblowers;
- provide advice, assistance, support and protection to whistleblowers;
- investigate both criminal reprisals (and make recommendations to police or prosecutorial authorities) and reprisals that are not criminal in nature; and
- where reprisals or detrimental outcomes have occurred, take non-criminal matters to the workplace tribunals or courts, or provide remedies directly where appropriate.²

The Committee was of the view that such an authority should be established within an appropriate existing body.³

Proposed structure for an independent whistleblower protection authority

With the National Anti-Corruption Commission currently in its establishment phase, we propose that it is the appropriate body to house a whistleblower protection authority.

This structure is essentially analogous to that proposed by Cathy McGowan in her National Integrity Commission Bill 2018 (Cth), Senator Larissa Waters in her National Integrity Commission Bill (No 2) 2018 (Cth), and Dr Helen Haines in her Australian Federal Integrity Commission Bill 2020 (Cth). The Commissions these Bills sought to establish were to be composed of various Commissioners, including a Whistleblower Protection Commissioner, who would in effect act as the whistleblower protection authority that had previously been recommended.

The functions of the Whistleblower Protection Commissioner in each case were to include the following (amongst others):

¹ Senate Select Committee on Public Interest Whistleblowing, Parliament of Australia, *In the Public Interest* (1994)

https://parlinfo.aph.gov.au/parlInfo/download/publications/taledpapers/HPP032016005056/upload_pdf/HPP032016005056.pdf;fileType=application%2Fpdf#search=%22publications/taledpapers/HPP032016005056%22 at p 107.

² Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Whistleblower protections* (2017) 2017

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/WhistleblowerProtections/Report at p 157-8.

³ *Ibid* at p xix.

- providing advice, assistance and guidance about the making of disclosures of wrongdoing;
- receiving disclosures of wrongdoing and protecting disclosers' identities and confidentiality as far as possible and appropriate;
- referring disclosures to appropriate Commonwealth agencies;
- monitoring and assisting agencies and bodies to whom disclosures of wrongdoing have been referred;
- overseeing how Commonwealth agencies investigate or deal with disclosures of wrongdoing;
- ensuring support and protection is provided as appropriate to people making disclosures of wrongdoing (which includes commencing court proceedings or making applications to industrial, civil or administrative bodies to enforce whistleblower protection responsibilities); and
- investigating and reporting on issues of reprisal, detrimental action, or failures to prevent detrimental action which follow disclosures of wrongdoing.⁴

The functions as enumerated in those Bills are comprehensive of the key functions any whistleblower protection authority must be empowered to perform. However, we also support the recommendation made by Transparency International Australia and the Human Rights Law Centre in respect of the relevant authority being empowered to administer a whistleblower reward scheme.⁵

Conclusion

The imminent commencement of the National Anti-Corruption Commission provides special impetus to progress the establishment of an independent whistleblower protection authority: if corruption is to be able to be detected and prevented, it is essential that those who are aware of information potentially constituting a public interest disclosure are *incentivised* to disclose, rather than *deterred* from doing so.

We recognise that the Government has previously committed to establishing a whistleblower protection authority, and consider that the Public Interest Disclosure Amendment (Review) Bill 2022 is the appropriate locus of provisions giving effect to this commitment. Insofar as the establishment of an independent whistleblower protection authority is a key way of addressing the chilling effect of those making disclosures of wrongdoing suffering harm, it must be part of any Bill seeking to make priority reforms to the PID Act.

About The Centre for Public Integrity

The Centre for Public Integrity is an independent think tank dedicated to preventing corruption, protecting the integrity of our accountability institutions, and eliminating undue influence of money in politics in Australia. Board members of the Centre are the Hon Stephen Charles AO KC, the Hon Anthony Whealy KC, the Hon Pamela Tate KC,

⁴ National Integrity Commission Bill 2018 (Cth) cl 14, National Integrity Commission Bill (No 2) 2018 (Cth) cl 14, Australian Federal Integrity Commission Bill 2020 (Cth) cl 14.

⁵ Brown, A. J. & Pender, K. (2022). *Protecting Australia's Whistleblowers: The Federal Roadmap*. Griffith University, Human Rights Law Centre and Transparency International Australia: Brisbane and Melbourne <<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/637733c7f74b51682fadbbfd/1668756427004/Protecting+Australia%27s+Whistleblowers+-+The+Federal+Roadmap+%282022%29+web.pdf>> at p 6.

Professor George Williams AO, Professor Joo Cheong Tham, Professor Gabrielle Appleby and Geoffrey Watson S. Former board members include the Hon Tony Fitzgerald AC KC and the Hon David Ipp AO KC.