

20<sup>th</sup> January 2023

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
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I am writing to make a submission to the Committee which is reviewing the Public Interest Disclosure Amendment (Review) Bill 2022.

As your Committee's review of the PID Act came to my attention only today and given today's deadline for submissions, I will limit my comments to ***#43 Allocation of disclosure – decision by authorized officer.***

***I believe the transfer of responsibility for completing public interest disclosure (PID) investigations from the Commonwealth Ombudsman's office to recipient agencies is flawed as the recipient agencies have a vested interest in making counter claims (often completely avoiding investigations) rather than reviewing matters.***

To help the Committee better understand my perspective, I will list below a summary of my experience dealing with the Commonwealth Ombudsman's office from 2015 to 2017.

I lodged a PID in 2015 to the Commonwealth Ombudsman. The PID material submitted was reviewed by the Ombudsman's Office and the matter declared as a valid PID. The PID involved a substantial sum of public monies expended by my employer to cover wrongdoing related to workplace bullying and unfair dismissal. ***Even Comcare expended substantial (public) funds in legal, medical and salary costs, all while the recipient agency (my former employer) that was asked to investigate the PID did nothing at all other than work hard to keep me out of court and the Fair Work Commission whilst I was sick!*** In the end, the Commonwealth Ombudsman's Office advised that they did not have to investigate further as my former employer had exercised their right under Section 48 (1) (d) of the PID Act, stating that my PID was vexatious. Given my experience, it is my belief that the 'automatic' process of the Commonwealth Ombudsman referring PIDs to recipient agencies is deeply flawed.

Currently the legislation does indeed allow recipient agencies to claim PID disclosures as being vexatious under Section 48 (1)(d). ***When an employee raises concerns about the misuse of public funds through the Commonwealth Ombudsman under the PID legislation it is usually to ensure accountability, transparency and integrity in the processes which should be followed by publicly funded agencies. It is the law.*** I have read the Agency Guide to PID at [http://www.ombudsman.gov.au/\\_\\_data/assets/pdf\\_file/0020/37415/Agency\\_Guide\\_to\\_the\\_PID\\_Act\\_Version\\_2.pdf](http://www.ombudsman.gov.au/__data/assets/pdf_file/0020/37415/Agency_Guide_to_the_PID_Act_Version_2.pdf). At page 38 (under 'frivolous or vexatious disclosure'), there is no mention that signing a deed of release in relation to an employment matter offers immunity to a Commonwealth agency from investigation in relation to disclosable conduct which has led to substantial cost to the Australian taxpayer. Yet, agencies continue to use this as tool to avoid investigations. When disclosers submit extensive evidence under the PID Act to ensure that misconduct stops or is prevented in the future and that the Australian taxpayer does not continue to be disadvantaged, it is unfair that the PID Act contains caveats that allow recipient agencies to get out of investigations.

A few other points I wish to make are that:

- (i) court settlements and deeds of release should not be used by public service agencies to stop PID investigations. (These deeds of release should not stop the Commonwealth Government to hold agencies and appropriate staff accountable to the Australian taxpayer.)
- (ii) While in the interests of transparency and fairness, the Commonwealth Ombudsman is required to refer matters to a recipient agency (except in cases of national security), it is important that the Ombudsman retains responsibility for appointing independent investigators to avoid the issue of 'conflict of interest'. Why would external investigators paid for by the recipient agency, not be looking after the interests of their clients in the first instance?

I am happy to provide further information if required.

**(Please consider as signed as sent via email and online submission)**

Joyce Noronha-Barrett