



## **Submission by the Alliance Against Public Prosecutions on the Public Interest Disclosure Amendment (Review) Bill 2022**

### ***Introduction***

The Alliance Against Political Prosecutions (AAPP) organisation was formed in response to the prosecutions of lawyer and former ACT Attorney General, Bernard Collaery, Australian Security and Intelligence Service officer Witness K, Australian Defence Force Major David McBride and tax officer, Richard Boyle.

All these prosecutions were commenced during the term of former Attorney-General Christian Porter and we consider that they were ill-advised and likely vengeful prosecutions, and not in the public interest. It is hard not to conclude that the prosecutions were intended to deter others from making public disclosures of wrongdoing.

If people are deterred from disclosing wrong doing by a public official or public agency, then that would encourage and perpetuate a culture of bad management, corruption or criminal activity. Whistleblowers who have information that a public official, agency or institution is undertaking activity that is detrimental to others, criminal, or otherwise not in the public interest, must be encouraged to make a complaint about that activity and be protected from any repercussions when they do so. If no appropriate response is made to the complaint, there should be no repercussions for making a public disclosure about the matter.

Whistleblowers are therefore an important safeguard for our society and an important means to retain integrity and public trust in government. Legislation and the justice system must provide them with strong protections throughout the process.

### ***Current legislative concerns***

We consider that it is unjust that whistleblowers Major David McBride and former ATO officer Richard Boyle both continue to face prosecution. These amendments to the Public Interest Disclosure (PID) Act 2013 acknowledge that the current Act is unable to provide them with the protections that it is widely acknowledged they need, and which should have been available to defend their disclosure actions. We consider that the Attorney-General should use his powers under Section 71 of the Judiciary Act 1903 to discontinue these prosecutions.

We also consider that a review of the National Security Information (NSI) Act 2004 is urgently needed as its blatant misuse in the Collaery, Witness K and McBride cases has been used to close the courts on a number of occasions without sufficient justification. Closing

the courts is an anathema to our justice system and should not be used where it is seen to be for the purposes of the government avoiding embarrassment. Secrecy in the courts destroys public trust in the justice system and also in government.

The case of the Witness J trial was an example of a secret trial in our justice system, which has been criticised by the Independent National Security Legislation Monitor, Grant Donaldson, SC, who said it should not have happened and should never happen again (SMH, 28 July 2022).

Further the legislation governing the Commonwealth Director of Public Prosecutions needs to be amended to ensure that a prosecution deemed to be in the public interest, provides detail of that 'public interest' so that a declaration of a prosecution 'in the public interest' cannot on its own be sufficient to justify prosecution.

***Concerns with the Bill amendments and the whistleblower legislative protection regime.***

AAPP supports *The Federal Roadmap: Protecting Australia's Whistleblowers*, 23 November 2022, compiled by Griffith University, the Human Rights Law Centre and Transparency International as providing the essential elements for whistleblower's protections. The Bill amendments fall short of fulfilling the needs for adequate whistleblower protections in Australia.

We are disappointed that neither the NACC legislation nor the current amendments have established, or will establish, a Whistleblowers Commission and Commissioner and the associated powers to ensure the proper investigation of disclosures and the protection of whistleblowers.

While we acknowledge the improvements some of the amendments will make to the current PID Act, we understand that there are serious concerns with the narrowness in drafting of the 'exclusion of personal work-related conduct' in Schedule 1, Part 1 of the Bill, and it needs to be redrafted to clarify it and also make it and the related Corporations Act provisions consistent. Further, the amendments do not address the need to enforce a positive duty to support and protect whistleblowers. This is a serious omission that should be addressed in this Bill.

We also consider that whistleblowers should not be penalised for going to the media to make disclosures if their complaint has not been addressed within a specified reasonable timeframe. The current explanatory memorandum states that the Bill allows that a disclosure can be made externally outside of Government in limited circumstances. If the disclosure has validity and has not been investigated or acted on by the agency, disclosure to the media must not be penalised. The provisions should not be so limited that such disclosure is penalised. We consider this to be a very important point.

Thank you for the opportunity to comment on the Bill's amendments.

Kathryn Kelly, Co-Convenor, Alliance Against Political Prosecutions