

Introduction

- 1.1 On 29 October 2012, Mr Andrew Wilkie MP introduced a private Members' bill, the Public Interest Disclosure (Whistleblower Protection) Bill 2012 (the Wilkie Bill) and the Public Interest Disclosure (Whistleblower Protection) (Consequential Amendments) Bill 2012 into the House of Representatives.
- 1.2 On 21 March 2013, the Attorney-General the Hon Mark Dreyfus QC introduced the Public Interest Disclosure Bill 2013 (PID Bill) into the House of Representatives.

Scope of the bills

Wilkie Bill

- 1.3 The Wilkie Bill aims to strengthen public integrity by encouraging and facilitating the disclosure of corruption, maladministration and other wrongdoing in the Commonwealth public sector. It will do so by providing protection for public officials to make such disclosures.¹
- 1.4 The Wilkie Bill will introduce measures designed to create a pro-disclosure culture as well as systems and procedures that will encourage people to report wrong-doing internally in the public sector, support them and protect them wherever possible and manage them effectively.²
- 1.5 The Wilkie Bill provides greater legislative provisions around the issue of third party disclosures to recipients such as journalists.

1 Public Interest Disclosure (Whistleblower Protection) Bill 2012, Explanatory Memorandum.

2 Professor AJ Brown, *Transcript of evidence*, Canberra, 30 November 2012, p. 8.

- 1.6 The Wilkie Bill includes provision to enable payment of compensation to those making a public interest disclosure. This is ensuring that if reprisal takes place, the whistleblower can be compensated to protect them from reprisal for exposing wrongdoing in the public interest.
- 1.7 The Public Interest Disclosure (Whistleblower Protection) (Consequential Amendments) Bill provides clarification amendments to the *Fair Work Act 2009* (FWA), the *Ombudsman Act 1979* and the *Parliamentary Service Act 1999* and the *Public Service Act 1999* in connection with the Wilkie Bill.

PID Bill

- 1.8 The Public Interest Disclosure Bill 2013 (the PID Bill) will establish a legislative scheme to investigate allegations of wrongdoing in the Commonwealth public sector and provide robust protections for current and former public officials who make qualifying public interest disclosures under the scheme.³
- 1.9 The PID Bill will implement many of the recommendations of the House of Representatives Standing Committee on Legal and Constitutional Affairs report *Whistleblower Protection: a comprehensive scheme for the Commonwealth public sector*.⁴ This report, described by some inquiry participants as the Dreyfus report after its Committee Chair, the Hon Mark Dreyfus MP QC, will be referred to in this report as the LACA report.
- 1.10 The PID Bill provides for the oversight of the scheme by the Commonwealth Ombudsman (the Ombudsman) and the Inspector-General of Intelligence and Security (IGIS). The Ombudsman is also responsible with the IGIS for the determination of standards to assist the scheme.⁵
- 1.11 The proposed scheme facilitates disclosures being reported to and investigated within government and is designed to promote the integrity and accountability of the Australian government public sector.⁶
- 1.12 The PID Bill will provide protection for a public official who has made a qualifying public interest disclosure, will provide immunity from criminal, civil and administrative liability for making a public interest

3 Public Interest Disclosure Bill 2013, Explanatory Memorandum.

4 House of Representatives Legal and Constitutional Affairs Committee (LACA), *Whistleblower Protection: a comprehensive scheme for the Commonwealth public sector*, February 2009.

5 Public Interest Disclosure Bill 2013, Explanatory Memorandum.

6 Public Interest Disclosure Bill 2013, Explanatory Memorandum.

disclosure and will make it an offence to take reprisal action against any person as a result of making a public interest disclosure.⁷

- 1.13 Remedies from the Federal Court and in some circumstances under the FWA will be available to disclosers who have suffered reprisals.⁸

Referral of the Bills

- 1.14 On 1 November 2012 the Selection Committee referred the Wilkie Bill and the associated Public Interest Disclosure (Whistleblower Protection) (Consequential Amendments) Bill 2012 to the House of Representatives Standing Committee on Social Policy and Legal Affairs (the Committee) for inquiry and report.
- 1.15 The Selection Committee suggested that the Committee further examine the detail contained within the bill(s) and any unintended consequences that may follow.⁹
- 1.16 On 21 March 2013 the Selection Committee referred the PID Bill to the House of Representatives Standing Committee on Social Policy and Legal Affairs for inquiry and report.
- 1.17 The Selection Committee suggested that the Committee consider the circumstances under which a protected disclosure may take place.¹⁰

Previous inquiries

- 1.18 In 2008, the Attorney-General, the Hon Robert McClelland MP on behalf of the then Cabinet Secretary, Senator the Hon John Faulkner, asked the House of Representatives Legal and Constitutional Affairs Committee (LACA Committee) to inquire into and report on whistleblowing protections within the Australian Government public sector.
- 1.19 The LACA Committee tabled *Whistleblower Protection: a comprehensive scheme for the Commonwealth public sector*¹¹ in February 2009, making 22 recommendations including the introduction of a Public Interest Disclosure Bill designed to promote accountability and integrity in public administration.

7 Public Interest Disclosure Bill 2013, Explanatory Memorandum.

8 Public Interest Disclosure Bill 2013, Explanatory Memorandum.

9 House of Representatives Selection Committee, *Report 72*, 1 November 2012.

10 House of Representatives Selection Committee, *Report 78*, 21 March 2013.

11 House of Representatives Legal and Constitutional Affairs Committee (LACA), *Whistleblower Protection: a comprehensive scheme for the Commonwealth public sector*, February 2009.

- 1.20 The Government responded to the LACA Report in March 2010, agreeing with many of the recommendations and indicating that it was committed to developing best practice legislation and would develop legislation for introduction later in 2010.¹²

Conduct of the inquiries

Wilkie Bill

- 1.21 The Committee advertised a public hearing and a call for submissions on 7 November 2012.
- 1.22 The Committee received 14 submissions and one supplementary submission from a range of individuals and organisations across Australia. These submissions are listed at Appendix A and can be accessed from the inquiry website¹³
- 1.23 The Committee held a public hearing on 30 November 2012. A list of witnesses that appeared before the Committee is at Appendix B.

PID Bill

- 1.24 The Committee called for submissions on 2 April 2013.
- 1.25 The Committee received 22 submissions from a range of individuals and organisations across Australia. These submissions are listed at Appendix A and can be accessed from the inquiry website.¹⁴

Scope of the report

- 1.26 Chapter 2 examines the nine parts of the Wilkie Bill and the Public Interest Disclosure (Whistleblower Protection) (Consequential Amendments) Bill 2012, providing scrutiny of the detail of each part. Key issues and additional comments made on the detail of the legislation are discussed. The Committee has also reported on any unintended consequences as identified.
- 1.27 Chapter 3 examines the five parts of the PID Bill. The conditions under which a protected disclosure could take place are considered in some
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12 Government Response to the House of Representatives Legal and Constitutional Affairs Committee (LACA), *Whistleblower Protection: a comprehensive scheme for the Commonwealth public sector*, March 2010, p. 2.

13 www.aph.gov.au/spla

14 www.aph.gov.au/spla

detail, as well as selected issues which arose during the inquiry including the coverage of the Bill and when it is appropriate to make an external disclosure. The Committee has considered the conditions under which a protected disclosure could take place.

- 1.28 Chapter 4 presents the Committee's comments and recommendation regarding the bills.
- 1.29 The purpose of this advisory report is for the Committee to scrutinise the content and detail of all of the Public Interest Disclosure Bills before the Parliament and the efficiency of the bills in achieving their stated objectives. It is for the Parliament to determine the merits of any proposed public interest disclosure protection scheme. The report aims to aid the Parliament in determining how it will proceed on these bills.

