

Public interest/whistleblower reports – comparative table		
	Public Interest Disclosure (Whistleblower Protection) Bill 2012	Public Service Act 1999 (as would be amended by the Public Service Amendment Bill 2012)
Who can make a report?	<p>Any current or former public official may make a public interest disclosure.</p> <p>A public official is defined in section 11 and includes agency employees, statutory office holders, agency heads, contractors, Senators, Members of the House of Representatives, and people employed under the <i>Member of Parliament (Staff) Act 1984</i>.</p>	Restricts eligibility to make a report to current Australian Public Service employees.
What can reports be about?	<p>Disclosable conduct is defined in subsection 9(1) as:</p> <p>(a) corrupt conduct engaged in by any person, agency or public official;</p> <p>(b) action of an agency or public official that is any of the following:</p> <ul style="list-style-type: none"> (i) maladministration that adversely affects a person’s interests in a substantial and specific way; (ii) a substantial misuse of public money or public property; (iii) a substantial and specific danger to public health or safety; (iv) a substantial and specific danger to the environment; (v) detrimental action towards, or victimisation of, any person relating to a public interest disclosure. 	<p>Breaches (or alleged breaches) of the Australian Public Service Code of Conduct. The Code of Conduct is set out in section 13.</p> <p>It is probable that most disclosable conduct in Mr Wilkie’s Bill could also breach the Code of Conduct if proven to have been the action of an APS employee or employees. The Public Service Act does not cover conduct of agencies.</p>
Who can investigate?	<p>Section 22 refers to:</p> <ul style="list-style-type: none"> • Head of the agency about which the report is made • Ombudsman - for reports about an agency head • Inspector-General of Intelligence (IGIS) – for reports about an intelligence agency • Investigative agency • Integrity agency. <p>Section 10 defines an ‘integrity agency’ and includes the Integrity Commissioner (under the <i>Law Enforcement Integrity Commissioner Act 2006</i>), the Auditor-General, the Public Service Commissioner and the Merit Protection Commissioner, as well as the Ombudsman and IGIS.</p> <p>Section 10 defines an investigative agency’ to include an integrity agency, the Australian Federal Police, the Australian Securities and Investments</p>	<p>An Agency Head, the Public Service Commissioner, and the Merit Protection Commissioner, and persons they authorise.</p> <p>Since 1999, the Public Service Commissioner has had authority under section 41(1)(f) of the <i>Public Service Act 1999</i> to inquire into allegations of breaches of the APS Code of Conduct by agency heads. (The Commissioner has established authority and expertise in this area. The existing avenue for raising concerns about agency head conduct is clear.)</p> <p>The Bill introduced by Mr Wilkie provides for a wider range of bodies with authority to investigate disclosable conduct, in some cases where statutory authority</p>

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	Commission and the Australian Competition and Consumer Commission.	<p>already exists for investigations of the same kind to be investigated by other office holders.</p> <p>Other schemes for investigation of wrongdoing in the Commonwealth operate concurrently with the Public Service Act 1999.</p>
Discretion not to investigate	Section 27 sets out the circumstances in which an investigating entity may decide not to investigate a public interest disclosure, or may end the investigation.	<p>The Public Service Amendment Bill 2012 would amend section 16 so that regulations may prescribe circumstances in which the Commissioner, the Merit Protection Commissioner or an Agency Head may:</p> <ul style="list-style-type: none"> (a) decline to conduct an inquiry into a whistleblower report; or (b) discontinue an inquiry into a whistleblower report. <p>The circumstances set out in Mr Wilkie’s Bill under which an investigation may be declined or discontinued appear to be capable of being prescribed by Public Service Regulations made under an amended Public Service Act.</p>
Conduct of investigations	<p>Section 26 specifies the procedures to be used for investigating a public interest disclosure.</p> <p>These include an APS agency’s procedures made under subsection 15(3) of the <i>Public Service Act 1999</i> for determining whether an APS employee has breached the APS Code of Conduct.</p>	<p>The Public Service Amendment Bill would amend the Public Service Act to require Agency Heads to establish procedures for dealing with a whistleblowing report made by an APS employee under section 16 of the Act.</p> <p>The procedures would need to comply with basic procedural requirements (if any) prescribed by the regulation.</p> <p>The regulations would be able to prescribe procedures for an APS employee to make a report to either the Public Service Commissioner or the Merit Protection Commissioner.</p>

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		<p>The regulations would be able to prescribe basic procedural requirements that the Public Service Commissioner and the Merit Protection Commissioner must comply with in dealing with a whistleblower report.</p> <p>Practically, the outcome of a whistleblower report is a recommendation about whether to start a Code of Conduct inquiry. Under subsection 15(3) of the Public Service Act, each Agency Head is required to establish procedures for determining whether an APS employee has breached the Code of Conduct. An agency’s procedures must comply with basic procedural requirements set out in the Public Service Commissioner’s Directions 1999.</p>
Protections	<p>Part 7 of Mr Wilkie’s bill sets out a range of legal protections for whistleblowers, including immunity from liability, protection from defamation action, and protection from detrimental action, such as unfavourable treatment, harassment or intimidation, harm or injury, or damage to a person’s property.</p> <p>The Bill provides a range of remedies, through the Federal Court or Federal Magistrates Court, to prevent or redress any detrimental action taken.</p>	<p>Section 16 of the PS Act prohibits the victimisation of, or discrimination against an APS employee who reports a breach or alleged breach of the Code to an Agency Head, the Public Service Commissioner, the Merit Protection Commissioner or a person authorised by them.</p> <p>If an employee harasses another employee for having lodged a whistleblowing report that employee may be investigated for a suspected breach of the Code of Conduct which requires employees to treat everyone without harassment in the course of their employment.</p> <p>The regulations could not provide for the range of legal protections set out in Part 7 of Mr Wilkie’s Bill.</p>