

Committee Comment

- 4.1 The Committee notes the strong support expressed by submitters for a public interest disclosure scheme. The Committee considers that legislation for public interest disclosure is overdue and to this end, welcomes the introduction of these public interest disclosure bills.
- 4.2 The Committee is pleased that, taking into account the recommendations of the LACA Report, the Parliament is considering providing a means for identifying and reporting wrongdoing in the Commonwealth public sector as well as ensuring that problems are rectified.
- 4.3 It is vital that individuals in the Commonwealth public sector are willing to report wrongdoing and that they are confident that the system will support them if they make such a public interest disclosure. A robust public interest disclosure scheme will provide confidence in the Commonwealth public sector from within and with the Australian public generally.
- 4.4 The Committee believes that public interest disclosure legislation should operate at the junction between public information and confidential and sensitive information held by governments. There is a tension, however, as to where the junction should be located.
- 4.5 The Committee notes that several stakeholder groups would like to see protection provided for all types of disclosures. The Attorney-General has stated that the emphasis of the scheme proposed in the PID Bill is to encourage internal disclosures and provide opportunities for government to identify and rectify problems.¹

¹ The Hon Mr Mark Dreyfus QC, Attorney-General, *House of Representatives Hansard*, 21 March 2013, p. 2897.

- 4.6 The Committee agrees with the Attorney-General that government should be given the opportunity to identify and rectify issues in the first instance.
- 4.7 The Committee notes that the Wilkie Bill is broader in its coverage of types of disclosures and scope of protections offered. This bill is supported by many of the stakeholder groups representing whistleblowers who have bravely stepped forward when there has been a culture where little or no protection is offered.
- 4.8 Both bills seek to remedy this situation and to achieve a robust system that affords appropriate protection to all parties in the disclosure and investigative process of any alleged wrongdoing.
- 4.9 The Committee notes that a number of issues have been raised in regard to the different schemes proposed and considers that both bills will benefit from further parliamentary debate.
- 4.10 While a number of issues have been raised by submitters, the Committee has not proposed amendments to either bill as it considers it is for the Parliament to determine issues such as the coverage, definitions, compensation or other operational aspects of a new scheme. These are policy considerations, and the purpose of the Committee inquiring into the bills is to provide an Advisory Report which will assess technical aspects of a bill and aid the Parliament in its debate and determination of the detail of each bill.
- 4.11 Consequently, for this Advisory Report the Committee has chosen to provide a detailed summation of the range of comments made by submitters and witnesses. In many instances, submitters are more critical of the PID Bill than the Wilkie Bill, and suggest that the PID Bill does not go far enough.
- 4.12 However a number of the issues raised in relation to the PID Bill were considered at length by the LACA committee (for example Qui Tam and certain third party disclosures) and were not considered workable or appropriate to the Australian context. Many other issues raised are reported here although they would more appropriately be addressed through regulation and standards rather than legislation. Other issues are beyond what is proposed by a public interest disclosure scheme but, in the interests of comprehensive reporting of the consultative process, they are included in this Advisory Report.
- 4.13 It is anticipated that, by providing a summation of the range of comments received, the Parliament may be better appraised of how a scheme may function, including its scope and limitations, when debating the provisions of either bill. It is also intended that, by highlighting the issues raised, the Parliament has the opportunity to consider amendments to either bill.

- 4.14 On balance, it is the view of the Committee that the PID Bill is more appropriately situated in terms of providing a comprehensive framework for public interest disclosures across the Commonwealth public sector. The PID Bill ensures that reports of suspected wrongdoing are properly handled by agencies and protects public officials who report suspected wrongdoing.
- 4.15 The emphasis of the scheme proposed in the PID Bill is on disclosures of wrongdoing being reported to and investigated within government in the first instance. This approach ensures that reports are responded to and problems are rectified.
- 4.16 While a number of issues have been raised, particularly in regard to the PID Bill, the Committee notes the overwhelming support for the introduction of public interest disclosure protections. The degree of interest in this inquiry reflects the urgent need to develop a pro-disclosure culture and an accompanying protective scheme.
- 4.17 The Committee notes the sixth report of 2013 of the Joint Committee on Human Rights², and the clarifications sought in relation to the PID Bill, particularly regarding:
- the prohibition on disclosures of certain categories of information
 - the exceptions to the use protected disclosure information, and
 - the exemptions and extent of the special arrangements available to intelligence agencies.
- 4.18 The concerns of the Human Rights Committee are consistent with many of the concerns raised by stakeholders. While the Committee maintains its support for the PID Bill and the much needed introduction of a public interest disclosure scheme, it agrees that further rationale for these provisions should be provided to the House during the course of debate on the Bill.
- 4.19 The Committee considers legislation to be the initial step and the real work will be in developing internal disclosure processes and raising awareness within the Commonwealth public sector.
- 4.20 The Committee considers that many of the issues that have been brought to its attention in this inquiry will be addressed either through the education and awareness program or the standards developed by the Ombudsman and IGIS. There is significant scope for the Ombudsman to clarify and provide additional detail about the majority of the issues identified here.

2 Parliamentary Joint Committee on Human Rights *Sixth report of 2013*, May 2013, pp. 50-57.

- 4.21 The Committee encourages the Ombudsman to consider all such issues when determining standards for the procedures and ensure that public officials are able to be confident in the operation of a public interest disclosure scheme.
- 4.22 The Committee is of the view that the central role of the Ombudsman's office and the IGIS is critical and, should the Parliament implement a public interest disclosure scheme, then detailed refinement of the Ombudsman and IGIS oversight roles will be required. The importance of these oversight roles to the success of developing a culture of disclosure cannot be underestimated. The Committee notes that both agencies are to be provided with additional funding to carry out these duties.
- 4.23 In conclusion, the Committee considers that public interest disclosure protection is long overdue. Noting the complex and challenging nature of the subject the Committee urges the Parliament to pass the PID Bill, having considered in detail the issues raised in this Advisory Report.

Recommendation 1

The Committee recommends that the House of Representatives pass the Public Interest Disclosure Bill 2013 having given consideration to amendments based on issues raised in this Advisory Report, in particular:

- **the scope of protections offered where disclosures are made in good faith, though they may later be found to be false or misleading;**
 - **the scope and clarity of protections offered for external disclosures; and**
 - **the scope of protections from reprisals.**
- 4.24 In order for the Parliament to have adequate time to consider and debate the PID Bill, the Committee has made the decision to report early. The Committee urges its Senate colleagues from the Legal and Constitutional Affairs Committee to submit their report as early as possible so that both Houses can have sufficient time to properly consider the proposed legislation.
- 4.25 A public interest disclosure scheme across the Commonwealth public sector is a significant reform and a critical step in ensuring transparency and accountability across agencies. Given that the success of the scheme requires not just legislative change but the development of rigorous internal procedures and cultural change to foster disclosure across

agencies, the Committee notes the importance of a review to assess the implementation and operation of a scheme.

- 4.26 Should the Parliament enact a public interest disclosure scheme, the Committee suggests that, twelve months from implementation of the scheme, a review take place to assess its operation. The issues raised in this Advisory Report should be considered when reviewing the scheme.

Graham Perrett MP
Chair

