

**HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS**

***WHISTLEBLOWER PROTECTION: A COMPREHENSIVE
SCHEME FOR THE COMMONWEALTH PUBLIC SECTOR***

GOVERNMENT RESPONSE

Introduction

On 10 July 2008, the Attorney-General, on behalf of the Cabinet Secretary, asked the House of Representatives Standing Committee on Legal and Constitutional Affairs (the Committee) to consider and report on a preferred model for legislation to protect public interest disclosures (whistleblowing) within the Australian Government public sector.

On 25 February 2009, the Committee released its report.

The Government supports a pro-disclosure culture in the Australian public sector, underpinned by enhanced whistleblower protection mechanisms, as part of its commitment to integrity in Australian governance. Whistleblower protection is about ensuring that there are appropriate processes in place, and protections offered, to facilitate the disclosure of wrongdoing, misconduct and corruption. The Government is committed to providing best-practice legislation to achieve this end.

The Government will develop legislation reflecting this Government response for introduction during this year. A further announcement about the legislation will be made in due course.

The proposed legislation will facilitate public interest disclosures in the Australian public sector being made by public officials where they have an honest and reasonable belief that a public interest disclosure should be reported. The disclosure would ordinarily be reported to a public official's agency and be investigated by that agency if the public interest disclosure is serious. If the disclosure relates to a criminal matter, the disclosure would be referred to the relevant law enforcement agency or handled in accordance with the *Commonwealth Fraud Control Guidelines*. If the disclosure is not serious, the disclosure may be handled as part of existing frameworks for addressing such matters.

The legislation will include oversight and investigation by an external agency (e.g. the Commonwealth Ombudsman or the Inspector-General of Intelligence and Security). It will also provide for an external agency to draw on the expertise of existing agencies (e.g. by referring a public interest disclosure for investigation and handling by an agency with responsibility for and expertise in the subject matter of that public interest disclosure). The legislation will provide for reporting requirements including reporting the outcome of an investigation to the public official. The legislation will provide targeted and appropriate protections for public officials who make public interest disclosures consistently with the scheme, such as anonymity, safeguards against victimisation and immunity from prosecution.

Guide for readers

In this document:

Integrity agency means: One of the two agencies responsible for the broad oversight of public interest disclosures in the Australian Government public sector.

Referral agency means: An agency to which an integrity agency may be able to refer public interest disclosures, or elements of public interest disclosures, for investigation and report (e.g. the Office of the Privacy Commissioner, the Australian Public Service Commission etc).

Responsible agency means: The agency responsible for the subject matter of the disclosure.

Recommendation 1:

The Committee recommends that the Australian Government introduces legislation to provide whistleblower protections in the Australian Government public sector. The legislation should be introduced to Parliament as a matter of priority and should be titled the Public Interest Disclosure Bill.

Government Response: Agreed.

The Government intends to introduce the *Public Interest Disclosure Bill* (the PID Bill) during this year.

Recommendation 2:

The Committee recommends that the purpose and principles of the Public Interest Disclosure Bill should reflect the following:

- *the purpose of the Bill is to promote accountability and integrity in public administration; and*
- *the provisions of the Bill are guided by the following principles:*
 - a) *it is in the public interest that accountability and integrity in public administration are promoted by identifying and addressing wrongdoing in the public sector;*
 - b) *people within the public sector have a right to raise their concerns about wrongdoing within the sector without fear of reprisal;*
 - c) *people have a responsibility to raise those concerns in good faith;*
 - d) *governments have a right to consider policy and administration in private; and*
 - e) *government and the public sector have a responsibility to be receptive to concerns which are raised.*

Government Response: Agreed.

The Government considers that the purpose and principles outlined in this recommendation provide a starting point for identifying the purposes and principles of the PID Bill.

The following principles may be included in the PID Bill:

- a) it is in the public interest that accountability and integrity in public administration are promoted by identifying and addressing wrongdoing in the public sector;
- b) people have a right to raise their concerns about wrongdoing within the public sector without fear of reprisal;
- c) where people raise their concerns about wrongdoing within the public sector, they have a responsibility to do so with an honest and reasonable belief in those concerns;
- d) governments have a legitimate interest in considering and developing policy and in administration, as appropriate, in confidence; and
- e) government and the public sector have a responsibility to be receptive to concerns which are raised.

Recommendation 3:

The Committee recommends that the Public Interest Disclosure Bill define people who are entitled to make a protected disclosure as a 'public official' and include in the definition of public official the following categories:

- *Australian Government and general government sector employees, including Australian Public Service employees and employees of agencies under the Commonwealth Authorities and Companies Act 1997;*
- *contractors and consultants engaged by the public sector;*
- *employees of contractors and consultants engaged by the public sector;*
- *Australian and locally engaged staff working overseas;*
- *members of the Australian Defence Force and Australian Federal Police;*
- *parliamentary staff;*
- *former employees in one of the above categories; and*
- *anonymous persons likely to be in one of the above categories.*

Government Response: Agreed.

The Government accepts that the categories of persons outlined in this recommendation should be covered by the scheme.

The PID will cover disclosures by a wide range of persons in, or with a relevant connection to, the public sector (within constitutional limits). This will include financial or other relationships between government and the public or private sectors.

The range of persons will, subject to constitutional limits, include:

- Australian Public Service employees and agency heads;
- employees, directors and officers of bodies subject to the *Commonwealth Authorities and Companies Act 1997*;
- employees of Commonwealth intelligence and security agencies;
- directors and employees of entities, companies or individuals with contractual or other financial relationships with the Australian Government;
- Australian and foreign nationals who are locally engaged staff working overseas;
- members of the Australian Defence Force and Australian Federal Police;
- statutory office holders;
- employees under the *Parliamentary Service Act 1999*;
- persons formerly in one of the above categories; and
- anonymous persons likely to be in one of the above categories.

Members of Parliament and *Members of Parliament (Staff) Act 1984* employees will not be covered.

Recommendation 4:

The Committee recommends that the Public Interest Disclosure Bill provide that the Commonwealth Ombudsman is the authorised authority for receiving and investigating public interest disclosures made by employees under the Members of Parliament (Staff) Act 1984.

Government Response: Not agreed.

The PID Bill will not authorise employees under the *Members of Parliament (Staff) Act 1984* to make disclosures under the scheme.

Disclosures will not be able to be made under the scheme about Members of Parliament. Allegations of wrongdoing by Members of Parliament should be addressed by the Parliament.

Similarly, disclosures will not be able to be made under the scheme about *Members of Parliament (Staff) Act 1984* employees.

Recommendation 5:

The Committee recommends that the Public Interest Disclosure Bill include a provision to enable a decision maker within the scheme to deem other persons to be a 'public official' for the purposes of the Act. Those who may be deemed a public official would have an 'insider's knowledge' of disclosable conduct under the legislation and could include current and former volunteers to an Australian Government public sector agency or others in receipt of official information or funding from the Australian Government.

Government Response: Agreed.

The Government considers it appropriate that the PID Bill include a mechanism (within constitutional limits) to deem persons to be public officials for the purposes of the scheme, who have an "insider's knowledge" of disclosable conduct under the legislation and who may not fall within the definition of public official (as outlined in the response to recommendation 3). This may include, for example, persons covered by the *Commonwealth Volunteers Protection Act 2003*.

Recommendation 6:

The Committee recommends that, after a period of operation of the proposed legislation, the Australian Government consider introducing protection for members of the public to make public interest disclosures about the Australian Government public sector.

Government Response: Agreed.

The Government supports a review of the legislation being undertaken within five years from the date of commencement of the legislation, to consider protection for members of the public to make public interest disclosures about the Australian Government public sector.

Recommendation 7:

The Committee recommends that the types of disclosures to be protected by the Public Interest Disclosure Bill include, but not be limited to serious matters related to:

- *illegal activity;*
- *corruption;*
- *maladministration;*
- *breach of public trust;*
- *scientific misconduct;*
- *wastage of public funds;*
- *dangers to public health;*
- *dangers to public safety;*
- *dangers to the environment;*
- *official misconduct (including breaches of applicable codes of conduct); and*
- *adverse action against a person who makes a public interest disclosure under the legislation.*

Government Response: Agreed in principle.

The Government supports in principle the categories outlined in this recommendation. The PID Bill will include the following categories of wrongdoing:

- illegal/unlawful activity (including corruption);
- maladministration;
- breach of public trust;
- scientific misconduct;
- wastage of public funds;
- dangers to public health or safety;
- dangers to the environment;
- official misconduct (including breaches of applicable codes of conduct); and
- adverse action against a person who makes a public interest disclosure under the legislation.

Complaints or disclosures about policy decisions made by the Government will not be covered; the scheme is about addressing wrongdoing.

The protections for those who make a PID will be triggered if there is an honest and reasonable belief that the relevant matter relates to a category of wrongdoing under the scheme. There will not be a requirement that the discloser honestly and reasonably believe the wrongdoing is serious.

The responsible agency and/or integrity agency will be obliged to investigate disclosures which are serious. Agencies will not be obliged to investigate allegations of minor wrongdoing under the PID scheme; minor wrongdoing should nonetheless be handled and investigated under existing frameworks for handling and investigating such allegations.

In the first instance, the responsible agency will determine whether the PID is serious. The responsible agency's decision on seriousness may be reviewed by the integrity agency (including at the request of the discloser), which could require the responsible agency to investigate the PID, or undertake an investigation itself.

Factors going to seriousness will be broad, and will likely include:

- the gravity of the action itself;
- the context in which the action occurred;
- the extent of the potential or actual consequence; and
- the potential to expose systemic wrongdoing beyond the allegation made.

Recommendation 8:

The Committee recommends that, on the enactment of a Public Interest Disclosure Bill, the Australian Government repeal current whistleblower provisions in s. 16 of the Public Service Act 1999 and s. 16 of the Parliamentary Service Act 1999.

Government Response: Not agreed.

The PID Bill will only protect disclosures which are made under the PID scheme. The existing regimes for complaints under other Acts will remain. Accordingly, protections for persons making complaints about breaches of the Australian Public Service Code of Conduct, or the Code of Conduct within the meaning of the

Parliamentary Service Act 1999, rather than making a disclosure under the PID Act, should retain the protections offered by the *Public Service Act 1999* or the *Parliamentary Service Act 1999*.

While these sections will not be repealed, the Government considers that the titles of each of these sections should be amended to remove the word ‘whistleblowers’.

Recommendation 9:

The Committee recommends that Public Interest Disclosure Bill provide that the motive of a person making a disclosure should not prevent the disclosure from being protected.

Government Response: Agreed.

The Government agrees that the motive of the person making the disclosure should not prevent the disclosure from being protected. The Government also refers to its response to Recommendation 10.

Recommendation 10:

The Committee recommends that the Public Interest Disclosure Bill provide, as the primary requirement for protection, that a person making a disclosure has an honest and reasonable belief on the basis of the information available to them that the matter concerns disclosable conduct under the legislation.

Government Response: Agreed.

The Government agrees that the person making a disclosure should receive protection if they have an honest and reasonable belief that the matter concerns disclosable conduct under the legislation.

Recommendation 11:

The Committee recommends that the Public Interest Disclosure Bill provide authorised decision makers with the discretion, in consideration of the circumstances, to determine to discontinue the investigation of a disclosure.

Government Response: Agreed.

The scheme will include the discretion for an authorised decision maker to determine to discontinue the investigation of a disclosure in circumstances including, and not limited to, where:

- the decision maker reaches a view that the matter is not serious; or
- the investigator reasonably believes an offence has been committed, the matter has been referred to the appropriate law enforcement agency and no other issues arise from the disclosure.

Recommendation 12:

The Committee recommends that protection under the Public Interest Disclosure Bill not apply, or be removed, where a disclosure is found to be knowingly false. However, an authorised decision maker may consider granting protection in circumstances where an investigation nonetheless reveals other disclosable conduct and the person who made the initial disclosure is at risk of detrimental action as a result of the disclosure.

Government Response: Agreed in principle.

The Government considers that knowingly false disclosures should not receive the protection of the scheme. Given there is a requirement for an honest and reasonable belief the matter concerns disclosable conduct under the legislation, knowingly false disclosures would not meet this threshold, and accordingly not acquire protection.

The Government considers that circumstances may arise where protection could be appropriate, including where the knowingly false disclosure reveals other disclosable conduct and the person who made the initial disclosure is at risk of detrimental action as a result of the disclosure.

Recommendation 13:

The Committee recommends that the Public Interest Disclosure Bill define the right to make a disclosure as a workplace right and enable any matter of adverse treatment in the workplace to be referred to the Commonwealth Workplace Ombudsman for resolution as a workplace relations issue.

Government Response: Not agreed.

The Government does not consider it appropriate that making a disclosure under the scheme should be a workplace right under the *Fair Work Act 2009* (the FW Act). The Government does not consider the FW Act is an appropriate vehicle to protect people who make disclosures about the public sector.

The Government will further consider options to protect persons who make disclosures under the scheme from detrimental treatment in the workplace which occurs as a result of making the disclosure.

Recommendation 14:

The Committee recommends that the protections provided under the Public Interest Disclosure Bill include immunity from criminal liability, from liability for civil penalties, from civil actions such as defamation and breach of confidence, and from administrative sanction.

Government Response: Agreed in principle.

The Government considers that a person who has an honest and reasonable belief that the disclosure concerns disclosable conduct under the legislation should be protected from all legal liability resulting from the disclosure, where the disclosure has been made in accordance with the scheme.

The Government will limit the scope of this protection to avoid conferring automatic immunity on those public officials whose participation in the conduct which they subsequently report may attract criminal or other liability.

Recommendation 15:

The Committee recommends that the Public Interest Disclosure Bill provide an obligation for agency heads to:

- *establish public interest disclosure procedures appropriate to their agencies;*
- *report on the use of those procedures to the Commonwealth Ombudsman; and*
- *where appropriate, delegate staff within the agency to receive and act on disclosures.*

Government Response: Agreed.

The PID Bill will oblige agency heads to:

- establish public interest disclosure procedures appropriate to their agencies;
- where appropriate, delegate staff within the agency to receive and act on disclosures;
- provide for confidentiality; and
- protect those who have made a disclosure from detrimental action.

There will also be a number of reporting obligations placed on responsible agencies, described in the response to recommendation 16.

Recommendation 16:

The Committee recommends that the Public Interest Disclosure Bill provide that agencies are obliged to:

- *undertake investigations into disclosures that are made from within the organisation or referred to it by another agency;*
- *undertake an assessment of the risks that detrimental action may be taken against the person who made the disclosure;*
- *within a reasonable time period or periodically, notify the person who made the disclosure of the outcome or progress of an investigation, including the reasons for any decisions taken;*
- *provide for confidentiality;*
- *protect those who have made a disclosure from detrimental action; and*
- *separate the substance of a disclosure from any personal grievance a person having made a disclosure may have in a matter.*

Government Response: Agreed in principle.

In addition to the obligations outlined in the response to recommendation 15, responsible agencies will be subject to a number of other obligations to ensure disclosures are appropriately managed. These will include obligations to:

- inform the integrity agency, as soon as practicable, that it has received a PID and provide basic information about the PID to the integrity agency;
- inform the discloser and the integrity agency, as soon as practicable afterwards, of whether the PID relates to a serious matter;
- investigate the PID if it relates to a serious matter (for example: serious maladministration, or serious wastage of public funds), except where the integrity agency directs otherwise (for example, where the integrity agency will investigate);
- where a responsible agency determines a disclosure is not serious for the purposes of the PID scheme, inform the discloser of avenues for complaint/investigation/review under another enactment, for example under the *Ombudsman Act 1976* or the *Privacy Act 1988* etc; and
- when conducting an investigation:
 - make reasonable attempts to uncover information and otherwise undertake thorough investigations of PIDs;
 - undertake an assessment of the risks that detrimental action may be taken against the person who made the disclosure;

- inform the discloser and the integrity agency, as soon as practicable afterwards, of key decisions made and reasons for these decisions, such as whether the agency intends to discontinue an investigation or whether a variation of time limits will be sought/made;
- complete investigations and key decisions within a reasonable timeframe, given the nature of the PID and the circumstances. This will likely include a general time limit of 90 days (except for criminal investigations), with an expectation of earlier resolution where possible, within which the responsible agency must have reported to the discloser and the integrity agency. The responsible agency and the discloser will both be able to apply to the integrity agency for an extension or reduction of this time period, based on the specific circumstances of the matter; and
- provide an initial estimate of the length of the investigation to the discloser and the integrity agency.

The responsible agency will also be subject to certain reporting obligations. Upon completion of an investigation, the responsible agency must provide to the integrity agency and the discloser a report appropriate to the circumstances including the following:

- the matters considered;
- the time periods decisions/investigations took;
- any claims or evidence of detrimental action against the discloser and the agency's response to it;
- the findings of the investigation; and
- actions taken/to be taken to address the findings.

Recommendation 17:

The Committee recommends that the Public Interest Disclosure Bill provide that the following authorities, external to an agency, may receive, investigate and refer public interest disclosures:

- *the Commonwealth Ombudsman, including in his capacity as Defence Force Ombudsman, Immigration Ombudsman, Law Enforcement Ombudsman and Postal Industry Ombudsman;*
- *the Australian Public Service Commissioner; and*
- *the Merit Protection Commissioner.*

Government Response: Agreed in principle.

The legislation will include an integrity and oversight function undertaken by two integrity agencies. These agencies will be, amongst other things, be the primary agencies, external to the responsible agency, to receive and investigate PIDs.

The Commonwealth Ombudsman will be the integrity agency for all public interest disclosures other than those relating to Commonwealth intelligence and security agencies. The Inspector-General of Intelligence and Security will be the integrity agency for public interest disclosures relating to Commonwealth intelligence and security agencies.

Where the discloser is unsatisfied with the outcome of the responsible agency's investigation, or where it is inappropriate for the responsible agency to investigate, the integrity agency will undertake its own investigation of the public interest disclosure.

The integrity agency, where appropriate, may refer PIDs or elements of PIDs to referral agencies for expert investigation.

Recommendation 18:

The Committee recommends that the Public Interest Disclosure Bill provide that the following authorities, external to an agency, may receive, investigate and refer public interest disclosures relevant to their area of responsibility:

- *Aged Care Commissioner;*
- *Commissioner for Law Enforcement Integrity;*
- *Commissioner of Complaints, National Health and Medical Research Council;*
- *Inspector-General, Department of Defence; and*
- *Privacy Commissioner.*

Government Response: Agreed in principle.

The Government agrees that the PID Bill will include a referral agency function, which could be used by an integrity agency for expert investigation of PIDs or elements of PIDs.

The authorities to which the integrity agency will be able to refer PIDs or elements of PIDs (referral agencies) will include:

- Australian Public Service Commissioner;
- Merit Protection Commissioner;
- Aged Care Commissioner;
- Commissioner of Complaints, National Health and Medical Research Council;
- Privacy Commissioner;
- Australia National Audit Office;
- Commissioner for Law Enforcement Integrity;
- Australian Human Rights Commission; and
- Australian Federal Police;

Referral agencies will be identified in regulations and include any Commonwealth agency with expertise in investigation. Referral agencies will be authorised to receive disclosures from the integrity agency (or the responsible agency in the case of the Australian Federal Police).

The responsible agency and integrity agencies will not ordinarily undertake criminal investigations, but may handle complaints in accordance with the *Commonwealth Fraud Control Guidelines*. Criminal investigations would be referred to the Australian Federal Police or the Commissioner for Law Enforcement Integrity (where appropriate).

Recommendation 19:

The Committee recommends that the Public Interest Disclosure Bill provide that where disclosable conduct concerns a Commonwealth security or intelligence service,

the authorised authorities to receive disclosures are the Inspector-General of Intelligence and Security and the Commonwealth Ombudsman.

Government Response: Agreed in principle.

It is appropriate for the Inspector-General of Intelligence and Security to be the integrity agency responsible for disclosure relating to Commonwealth intelligence and security agencies.

Recommendation 20:

The Committee recommends that the Public Interest Disclosure Bill establish the Commonwealth Ombudsman as the oversight and integrity agency with the following responsibilities:

- *general administration of the Act under the Minister;*
- *set standards for the investigation, reconsideration, review and reporting of public interest disclosures;*
- *approve public interest disclosure procedures proposed by agencies;*
- *refer public interest disclosures to other appropriate agencies;*
- *receive referrals of public interest disclosures and conduct investigations or reviews where appropriate;*
- *provide assistance to agencies in implementing the public interest disclosure system including:*
 - *provide assistance to employees within the public sector in promoting awareness of the system through educational activities; and*
 - *providing an anonymous and confidential advice line; and*
 - *receive data on the use and performance of the public interest disclosure system and report to Parliament on the operation of the system.*

Government Response: Agreed in principle.

The Commonwealth Ombudsman will be responsible for the general operation of the proposed legislation.

The Commonwealth Ombudsman will set general standards for the investigation and reporting of PIDs by responsible agencies and work with agencies to develop guidelines and reporting frameworks. It will also approve public interest disclosure procedures proposed by agencies, except in the case of Commonwealth intelligence and security agencies, where the Inspector-General of Intelligence and Security will provide necessary approvals.

The Commonwealth Ombudsman will also provide assistance to agencies in implementing the public interest disclosure system, including:

- *providing assistance to employees within the public sector in promoting awareness of the system through educational activities;*
- *providing a confidential advice line; and*
- *receiving data on the use and performance of the public interest disclosure system and reporting to Parliament on the operation of the system.*

In relation to Commonwealth intelligence and security agencies, the Inspector-General of Intelligence and Security will assist the Commonwealth Ombudsman to undertake these functions.

Recommendation 21:

The Committee recommends that the Public Interest Disclosure Bill protect disclosures made to the media where the matter has been disclosed internally and externally, and has not been acted on in a reasonable time having regard to the nature of the matter, and the matter threatens immediate serious harm to public health and safety.

Government Response: Agreed in principle.

The PID Bill will protect public disclosures (e.g. to third parties, including the media):

- (a) where:
 - (i) the matter disclosed has previously been disclosed to the responsible agency and the integrity agency, or the integrity agency directly; and
 - (ii) the disclosure relates to a serious matter; and
 - (iii) the disclosure was not acted upon in a reasonable time or the discloser has a reasonable belief that the response was not adequate or appropriate; and
 - (iv) no more information than is reasonably necessary to make the disclosure is publicly disclosed; and
 - (v) the public interest in disclosure outweighs countervailing public interest factors (e.g. protection of international relations, national security, cabinet deliberations etc); OR
- (b) where:
 - (i) the discloser has a reasonable belief that a matter threatens substantial and imminent danger or harm to life or public health and safety; and
 - (ii) there are exceptional circumstances explaining why there was no prior disclosure internally (i.e. to the responsible agency) or externally (e.g. to the Commonwealth Ombudsman) of the serious public interest disclosure.

Public disclosures will not be protected where the public interest disclosure relates to intelligence-related information or is to a foreign government official.

Recommendation 22:

The Committee recommends that the Public Interest Disclosure Bill include Commonwealth Members of Parliament as a category of alternative authorised recipients of public interest disclosures.

Government Response: Not agreed.

The Government notes that parliamentary privilege and the implied right to freedom of political communication already provide some protection to Members of Parliament and persons who provide information to them in certain circumstances. The Government also refers to its responses to Recommendations 23 and 24.

Recommendation 23:

The Committee recommends that, if Commonwealth Members of Parliament become authorised recipients of public interest disclosures, the Australian Government propose amendments to the Standing Orders of the House of Representatives and the

Senate, advising Members and Senators to exercise care to avoid saying anything in Parliament about a public interest disclosure which would lead to the identification of persons who have made public interest disclosures, which may interfere in an investigation of a public interest disclosure, or cause unnecessary damage to the reputation of persons before the investigation of the allegations has been completed.

Government Response: Agreed in principle.

While the Government does not consider Members of Parliament should be authorised recipients under the scheme, it may be that they will from time to time become aware of a matter which is a public interest disclosure. Accordingly, the Government will consider whether to support the introduction of amendments advising Members of Parliament to exercise care in how such a matter is handled, were they to become aware of the substance of a public interest disclosure. For instance, the Government is concerned to avoid the identification of persons who have made public interest disclosures, interference in an investigation of a public interest disclosure, or unnecessary damage to the reputation of persons before the investigation of allegations has been completed.

Recommendation 24:

The Committee recommends that the Public Interest Disclosure Bill provide that nothing in the Act affects the immunity of proceedings in Parliament under section 49 of the Constitution and the Parliamentary Privileges Act 1987.

Government Response: Agreed.

For the avoidance of doubt, the PID Bill will provide that nothing in the Act affects the immunity of proceedings in Parliament under section 49 of the Constitution and the *Parliamentary Privileges Act 1987*.

Recommendation 25:

The Committee recommends that the Public Interest Disclosure Bill protect disclosures made to third parties such as legal advisors, professional associations and unions where the disclosure is made for the purpose of seeking advice or assistance.

Government Response: Agreed in part.

The Government does not consider these third party groups should be authorised recipients under the scheme. Nevertheless, the Bill will provide statutory protections for communications with legal advisors made for the purpose of obtaining legal advice or assistance.

Recommendation 26:

The Committee recommends that the Public Interest Disclosure Bill provide authority for the Commonwealth Ombudsman to publish reports of investigations or other information relating to disclosures (including the identity of persons against whom allegations are made) where the Ombudsman considers it is in the public interest to do so.

Government Response: Agreed in principle.

The Commonwealth Ombudsman will have authority to publish reports of investigations or other information relating to disclosures (including the identity of

persons against whom allegations are made) where the Commonwealth Ombudsman considers it is in the public interest to do so.

As the Inspector-General of Intelligence and Security is the primary external authority for disclosures relating to Commonwealth intelligence and security agencies, the Inspector-General will have the authority to prepare and publish reports relating to disclosures on these matters.

Any such publications will be subject to privacy, national security and like considerations.