# TRANSPARENCY INTERNATIONAL AUSTRALIA

*Affiliate of Transparency International, the Coalition against Corruption*

PO Box 41
Blackburn South Vic 3130
AUSTRALIA

Ph/Fax: +61 2 9389 5930
tioz@transparency.org.au
www.transparency.org.au


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Dr Anna Dacre
Committee Secretary
Standing Committee on Social Policy and Legal Affairs
Parliament House
Canberra ACT 2600

Dear Dr Dacre

**Submission on the Public Interest Disclosure Bill 2013**

Thank you for the invitation to make a submission on the *Public Interest Disclosure Bill* 2013.

Transparency International Australia (TIA) is the Australian Chapter of Transparency International, the global coalition against corruption. TIA has for many years urged successive Commonwealth governments to enact a comprehensive Public Interest Disclosure Act covering all Commonwealth officials, and including effective central oversight and co-ordination, provision for disclosure to the media as a last resort or in exceptional circumstances, and accessible, enforceable and realistic employment remedies for officials who suffer detriment as a result of having made a public interest disclosure.

TIA has also called for prompt Commonwealth government action to review, on the basis of recent research, options for comprehensive reform of whistleblower protection in non-government and business organisations which are subject to Commonwealth regulation.

This submission briefly assesses the extent to which the *Public Interest Disclosure Bill* 2013 meets these criteria.

**Comprehensive public interest disclosure regime**

There are a number of areas in the Bill which do as currently drafted are disincentives to making disclosures or do not support a comprehensive public interest disclosure regime. For example:

- **disclosure recipients:** The Bill only protects disclosers once a disclosure is made to designated 'authorised officers' (cl. 36). But in practice disclosures are likely to be made in the first instance to a supervisor, who is unlikely to be an authorized officer. The Bill is silent on whether protection applies to disclosures made to a supervisor who is not an authorized officer. This uncertainty is a disincentive to disclosure and should be addressed
- **liability for false or misleading statements:** cl.11 of the Bill preserves an offence of making a statement that is false or misleading. This is a major disincentive to making disclosures. The clause should be redrafted to apply only to those who 'knowingly' provide false or misleading information.
- **discretion not to investigate:** the cl. 48 (1) discretions not to investigate include (b) if the information that is disclosed does not tend to show any instance of disclosable conduct; or (c) does not, to any extent, concern

serious disclosable conduct. Use of words such as "does not tend" and "serious disclosable conduct" seem to provide a very wide discretion not to investigate and may discourage disclosures where the discloser is not 100% sure of his or her information. These provisions do not support a culture of disclosure.

**Coverage of all Commonwealth officials**

TIA is concerned that the Bill does not provide for protection of officials if they disclose wrongdoing by Ministers, politicians or their staff, or by judicial officers or persons engaged in judicial work. In addition, legislative and Ministerial staff are not entitled to claim the protection of the legislation, but it is hard to see why they shouldn't be able to be protected. These are major gaps, and there does not appear to be any justification for them.

A further major omission in the Bill is that it does not cover wrongdoing by intelligence agencies. The definition of "intelligence information" which is precluded from public interest disclosure in cl.41 is disturbingly broad, including *any* "information that has originated with, or has been received from, an intelligence agency', ie, it is not restricted to information whose disclosure carries risk of actual harm to security, intelligence or law enforcement interests, but extends beyond 'intelligence-related information' to *any* information involving an intelligence agency.

**Effective central oversight and co-ordination**

The current provisions in the Bill enable the oversight agencies to 'assist' agencies but do not require them to participate in an active oversight arrangement.

**Adequacy of protections for disclosers and effective remedies for officials who suffer detriment as a result of having made a public interest disclosure**

TIA is concerned that cl. 44 (1) (d) requires details of the discloser's identity to be revealed to the principal officer of an agency to which the handling of the disclosure is allocated. This raises risks of adverse consequences for the discloser. It is hard to see why this provision is necessary.

**Overall assessment of the Bill**

The public commentary since the Bill was introduced has identified these and other problems with the Bill, which will no doubt be raised at greater length in other submissions. If these problems are addressed, the Bill is likely to meet Transparency International's Principles for Whistleblowing Legislation (see www.transparency.org/files/content/activity/2009_PrinciplesForWhistleblowingLegislation_EN.pdf).

The current Bill does not measure up to the most recent best practice Australian legislation, the ACT *Public Interest Disclosure Act 2012*. The Standing Committee on Social Policy and Legal Affairs also has the benefit of its previous inquiry into Mr Wilkie's *Public Interest Disclosure (Whistleblower Protection) Bill* 2012. The Committee thus is well placed to recommend amendments that would achieve best practice legislation taking into account the strengths of both the ACT Act and the Wilkie Bill.

Yours sincerely

Elizabeth O'Keeffe
Director, Transparency International Australia