

Public Interest Disclosure (Whistleblower Protection) Bill 2012

- 2.1 The Wilkie Bill is designed to provide a foundation for a culture of public interest disclosure in the Australian public sector, identifying what is a public interest disclosure, who is entitled to make one and to whom as well as setting a framework for agencies and their oversight.
- 2.2 The Wilkie Bill contains nine parts:
- preliminary;
 - scope of the Act;
 - making a public interest disclosure;
 - investigations;
 - public interest disclosures to third parties;
 - obligations of agencies;
 - legal protections for disclosers;
 - oversight of public interest disclosures; and
 - miscellaneous.
- 2.3 Professor AJ Brown, a witness at the public hearing, acknowledges that he had a role in advising the Member for Denison on the formation of the Wilkie Bill, along with a range of other people and groups.¹
- 2.4 There is wide ranging support² for some form of public interest disclosure legislation from submitters to the inquiry and participants in the public hearing.

1 Professor AJ Brown, *Transcript of evidence*, Canberra, 30 November 2012, p. 1.

2 See for example CPSU, *Submission 5*; Civil Liberties Australia, *Submission 6*; Dr Andrew Stewart, *Submission 1*; Law Council of Australia, *Submission 9*.

- 2.5 Some of the issues that participants in the inquiry draw the Committee's attention to include the language or intent of the bill. Some participants made more general comments which are discussed below.
- 2.6 Some submissions are less supportive of the Wilkie Bill³, and its research background⁴ or recommended that the bill be extended to include a whistleblower protection agency or public interest disclosure agency.⁵
- 2.7 Professor AJ Brown submits that there are three areas, identified by the LACA Report and in research, that need to be detailed in any public interest disclosure scheme:
- the introduction of a pro-disclosure culture and systems and procedures that will encourage people to report wrong doing internally in the public sector, support them and protect them where possible and manage them effectively;
 - guidance for when people should be able to go public as a last resort or in exceptional circumstances; and
 - effective compensation for people who blow the whistle.⁶
- 2.8 Several participants⁷ in the inquiry state that there is a clear need for a legislated public interest disclosure protection scheme, clarifying that this would provide greater protection for whistleblowers than what currently exists in the *Public Service Act 1999*.⁸

Scope of the Act

- 2.9 The Wilkie Bill creates a comprehensive definition of a public interest disclosure. The definition includes that the public official should honestly believe on reasonable grounds that the information disclosed demonstrates disclosable conduct. It also includes circumstances where the information disclosed tends to demonstrate disclosable conduct regardless of the belief of the public official making the public interest disclosure.⁹

3 Dr Kim Sawyer, *Submission 2*, p. 1.

4 Whistleblowers Action Group Qld Inc, *Submission 11*, p. 2.

5 Whistleblowers Australia Inc, *Submission 10*, p. 9; Whistleblowers Action Group Qld Inc, *Submission 11*, p. 2.

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

7 See for example Accountability Round Table, *Submission 7*, p. 3; Law Council of Australia, *Submission 9*; Transparency International Australia, *Submission 12*.

8 Law Council of Australia, *Submission 9*, p. 8.

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

- 2.10 The Law Council of Australia (the Law Council) highlights several drafting issues. They
- query whether the Wilkie Bill covers subcontractors and the employees of contractors referred to in clause 11(a)(ii);
 - consider that terms such as *specific* and *substantial* as used in clause 9 are imprecise¹⁰;
 - highlight that the proposed legislation as drafted does not define an action contrary to a law of a State or Territory; and
 - note that in the situation referred to above, the legislation should ensure that any breach of State or Territory law be referred to the relevant State and Territory police, which is not currently contained within the bill.¹¹
- 2.11 The Law Council considers that these issues should be further considered before the bill is enacted.¹²
- 2.12 The Community and Public Sector Union (CPSU) notes the term ‘statutory agency’ was not included in clause 10 of the bill. They consider that the bill intends to cover statutory agencies, as they are referred to in clause 14 and consider that the Wilkie Bill should be amended to ensure that agencies are explicitly mentioned in clause 10.¹³
- 2.13 The CPSU also suggests that further information and guidance that illustrates the forms of disclosable conduct should be provided to those covered by the legislation.¹⁴
- 2.14 Civil Liberties Australia supports the detailed meanings in the bill such as defining a public interest disclosure, delineating protected public interest disclosures and detrimental actions and considers they provide greater certainty and clarity.¹⁵
- 2.15 Whistleblowers Australia Inc provide an alternative wording for the objects which places the public interest at the centre of the definition. They consider that ‘the public interest’ is the primary purpose of a public interest disclosure.¹⁶
- 2.16 Whistleblowers Australia Inc also suggest expanding the definition of ‘corrupt conduct’ as listed in clause 9 of the bill to include:

10 Law Council of Australia, *Submission 9*, p. 6.

11 Law Council of Australia, *Submission 9*, p. 5.

12 Law Council of Australia, *Submission 9*, p. 5.

13 CPSU, *Submission 5*, p. 4.

14 CPSU, *Submission 5*, p. 5.

15 Civil Liberties Australia, *Submission 6*, p. 2.

16 Whistleblowers Australia Inc, *Submission 10*, p. 4.

...conduct that conceals, or is engaged in for the purpose of concealing wrongdoing, otherwise known as a 'cover-up'.¹⁷

Making a public interest disclosure

- 2.17 The Wilkie Bill identifies who may make a public interest disclosure and to whom it may be made. In addition, it specifies how a public interest disclosure can be made.
- 2.18 The bill provides details of the actions that must be taken upon receipt of a public interest disclosure.
- 2.19 The Law Council believes that the Wilkie Bill increases the scope of people who are able to make a public interest disclosure. They contend that this goes beyond the coverage of section 16 of the *Public Service Act 1999* to contractors and subcontractors and the officers and employees of the contractors and subcontractors.¹⁸
- 2.20 In contrast, Whistleblowers Australia Inc argues that the scope of who can make a public interest disclosure under the proposed legislation is not wide enough. They propose that protection should be opened up to anyone who makes a disclosure in the public's interest.¹⁹
- 2.21 The Law Council is of the view that the Wilkie Bill recognises and addresses the fact that individuals may need to be encouraged to make public interest disclosures.²⁰
- 2.22 The CPSU notes that under COAG arrangements, there are likely to be State and Territory employees working on Commonwealth projects and that State and Territory employees working in these arrangements should be referenced in the Wilkie Bill.²¹
- 2.23 The Tax-Justice Network Australia (TJN Australia) is supportive of the scope of definition of public official contained within the Wilkie Bill which they consider would extend to non-Australian Commonwealth employees working for agencies such as AusAID and Austrade.²²

17 Whistleblowers Australia Inc, *Submission 10*, p. 6.

18 Law Council of Australia, *Submission 9*, p. 3.

19 Whistleblowers Australia Inc, *Submission 10*, p. 5.

20 Law Council of Australia, *Submission 9*, p. 2.

21 Ms Louise Persse, CPSU, *Transcript of evidence*, Canberra, 30 November 2012, p. 8.

22 Tax Justice Network Australia, *Submission 4*, p. 6.

- 2.24 The Ombudsman considers that the bill should be examined to ensure that it is clear to whom someone should go if they want to make a public interest disclosure.²³

Investigations

- 2.25 Part 4 of the bill provides detail on the obligations that need to be met when a public interest disclosure has been received. The bill proposes that the details of the obligations vary based on the nature of the disclosure.
- 2.26 Critical features of the bill include how public interest disclosures are investigated and who must be kept informed during an investigation.
- 2.27 The bill provides that the discloser must be kept informed about the progress of an investigation and that the investigating entity must have regard to procedural fairness and to the risk of any detrimental action.²⁴
- 2.28 The CPSU is concerned that the Wilkie Bill as drafted allows an investigating agency the choice about whether it treats some public interest disclosures according to investigative procedures established for a code of conduct breach under section 15(3) of the *Public Service Act 1999*, or in accordance with standards to be set by the Ombudsman in clause 54 of the bill.
- 2.29 They consider that this introduces the possibility that agencies could utilise the investigative procedure which is of a lesser standard, which in the opinion of the CPSU, could weaken the public interest disclosure scheme.²⁵ The CPSU considers that there should be greater guidance to agencies around this issue.
- 2.30 Further the CPSU considers that it is important that any legislation state that there is an obligation that an investigation be completed and a decision made about the disclosable conduct. They consider the bill as drafted implies this but as it is such an important issue, it should be specifically stated.²⁶
- 2.31 In addition, the CPSU considers that there should be an obligation to investigate the matter within a reasonable timeframe.²⁷ They suggest that this could be provided for in the bill or the Ombudsman's standards.

23 Mr Colin Neave, Commonwealth Ombudsman, *Transcript of evidence*, Canberra, 30 November 2012, p. 7.

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

25 CPSU, *Submission 5*, p. 7.

26 CPSU, *Submission 5*, p. 8.

27 CPSU, *Submission 5*, pp. 8-9.

- 2.32 The Law Council noted that there are guidelines for procedural fairness for persons in relation to whom a whistleblower report has been made under the *Public Service Act 1999* based framework. They suggest that these guidelines may operate in parallel with this proposed legislation but that there should be consideration of this issue when agency procedures are developed.²⁸
- 2.33 Whistleblowers Australia Inc would like to see publishing of the reasons for a final decision by an agency about an investigation, including a decision not to investigate, within a month of the date of decision.²⁹
- 2.34 Whistleblowers Australia Inc suggest that the bill should require an agency to publicly state that a public interest disclosure investigation is taking place. They consider that making a public interest disclosure secret or confidential is counterproductive.³⁰
- 2.35 Transparency International Australia praised the bill for providing specific detail on particular ways of investigating disclosures which may contain sensitive defence, intelligence or law enforcement information.³¹

Public interest disclosures to third parties

- 2.36 The circumstances and limitations under which public interest disclosures to third parties may take place are detailed in part 5 of the bill.
- 2.37 The CPSU strongly contends that consideration should be given to allowing third party disclosures in situations that pose a serious and immediate threat to public health and safety.³² They consider that these grounds are not addressed in the bill.
- 2.38 The Law Council notes that the bill recognises the important role of media in drawing attention to improper conduct in the government. The Law Council notes that the bill does not give general licence for disclosure to journalists, but provides a:
- ...balanced and reasonable framework to determine when the protection of the legislation would extend to disclosures by public officials to journalists.³³

28 Law Council of Australia, *Submission 9*, p. 7.

29 Whistleblowers Australia Inc, *Submission 10*, p. 7.

30 Whistleblowers Australia Inc, *Submission 10*, p. 6.

31 Transparency International Australia, *Submission 12*, p. 2.

32 CPSU, *Submission 5*, p. 6.

33 Law Council of Australia, *Submission 9*, p. 4.

- 2.39 The TJN Australia welcomes the clarification provided by the bill around public interest disclosures to third parties. They contend that this is unlikely to cause a 'flood of public disclosures' particularly when considering the safeguards and criteria put in place by the bill.³⁴
- 2.40 The CPSU queries the interaction of the oversight role of the Ombudsman as detailed in clause 50(2) with the scenario addressed in clause 31(e) where a public interest disclosure to a third party is allowed, given that there was evidence of a disclosure and it has been investigated but no action has been taken.
- 2.41 In this situation the CPSU considers that it would be inappropriate for a person to make a third party disclosure where there was a failure to take action if the matter was still under review by the Ombudsman. They consider that the Ombudsman should be given the opportunity to review the process before a public interest disclosure to a third party is allowed.³⁵
- 2.42 Civil Liberties Australia consider it is necessary and best practice to have an avenue for disclosing information that is in the public interest, when internal avenues and existing reporting avenues have failed to deal with the issues satisfactorily.³⁶
- 2.43 The Media, Entertainment and Arts Alliance welcome the proposed legislation and commented that there was continual debate amongst journalists about whether this or any legislation could go far enough in legitimising a circumstance where a person would make a third party disclosure to a journalist.³⁷
- 2.44 Transparency International Australia considers the bill sets clear constraints on when and how whistleblowers should go public or to a third party.³⁸
- 2.45 The IGIS considers that further scrutiny is required regarding the proposed provision allowing a person to disclose sensitive information when they believe that the public interest served by the disclosure outweighs the public interest served by the protection of sensitive information. The IGIS suggests that it would be very challenging to make that kind of assessment.³⁹

34 Tax Justice Network Australia, *Submission 4*, p. 6.

35 CPSU, *Submission 5*, pp. 6-7.

36 Civil Liberties Australia, *Submission 6*, p. 2.

37 Mr Chris Warren, Media, Entertainment and Arts Alliance, *Transcript of evidence*, Canberra, 30 November 2012, p. 11.

38 Transparency International Australia, *Submission 12*, p. 2.

39 Dr Vivienne Thom, Inspector General of Intelligence and Security (IGIS), *Transcript of evidence*, Canberra, 30 November 2012, p. 7.

Obligations of agencies

- 2.46 The obligations of agencies in relation to public interest disclosures are set out in part 6 of the bill.
- 2.47 The bill details the role of the head of the agency and that the agency's procedures around public interest disclosures must be consistent with the standards prepared by the Ombudsman.
- 2.48 Clause 35 of the bill details a series of requirements for an agency's procedures regarding public interest disclosures, including encouraging disclosing any matter considered to be wrongdoing.
- 2.49 Further, the bill provides detail on appropriate confidentiality guidelines.
- 2.50 The Australian Public Service Commission (APSC) raises the issue of existing powers in other legislation, such as how the role of the Public Service Commissioner in maintaining standards of conduct in the public service, would mesh with new powers in public interest disclosure legislation.⁴⁰
- 2.51 The APSC considers that in some cases, this could lead to confusion and different interpretations over roles and powers.
- There may be some difficulties with the bill as drafted, there may be some difficulties with the commissioner being able to fulfil his existing responsibilities. There are existing powers so it is not necessary to create new powers in the PID bill.⁴¹
- 2.52 The APSC also questions how the bill would operate within the existing whistleblower scheme that applies in the public service.⁴² They considered that there needed to be further examination of how the requirements would work together in order to assist employees and employers understand their responsibilities.⁴³
- 2.53 Professor AJ Brown informed the Committee that he considered only a small number of amendments would be necessary to sort out issues such as these.⁴⁴
- 2.54 The CPSU raised the possibility that the relevant unions could be involved when agencies are developing procedures for handling disclosures as proposed in clause 35 of the bill.⁴⁵

40 Ms Karin Fisher, APSC, *Transcript of evidence*, Canberra, 30 November 2012, p. 5.

41 Ms Karin Fisher, APSC, *Transcript of evidence*, Canberra, 30 November 2012, p. 5.

42 Ms Karin Fisher, APSC, *Transcript of evidence*, Canberra, 30 November 2012, p. 5.

43 Ms Karin Fisher, APSC, *Transcript of evidence*, Canberra, 30 November 2012, p. 5.

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

45 CPSU, *Submission 5*, p. 8.

Legal protection for disclosures

- 2.55 The Wilkie Bill outlines the legal protection for disclosers in Part 7.
- 2.56 The bill provides for immunity from liability including the explicit statement that no sanction may be imposed upon the discloser as a result of the disclosure.⁴⁶
- 2.57 This part provides details of actions which are considered detrimental action and in addition, clause 41 allows that detrimental action is adverse action for the purposes of the FWA and attracts the remedies available under the FWA.
- 2.58 The TJN Australia notes that it is vital that people making a public interest disclosure are protected from detrimental action or victimisation. The TJN Australia supports such inclusions including clause 46 of the bill which makes an offence of victimising a whistleblower.⁴⁷
- 2.59 The CPSU is supportive of the measures in the bill that provide legal protection and immunity from liability for a person who makes a public interest disclosure.⁴⁸ They consider that any remedies should be quick, accessible and affordable.⁴⁹
- 2.60 The CPSU told the Committee that there was merit in considering the FWA and in defining the process of making a public interest disclosure a workplace right.⁵⁰
- 2.61 The organisation Blueprint for Free Speech highlighted how this legislation brings into consideration the compensation provisions available under the FWA, namely:
- the availability of the Fair Work tribunal; and
 - protection from costs, where if someone brings an action in the Federal Court or Federal Magistrates Court, this bill enables an applicant to use the provisions of the FWA so as to not be liable to bear the respondents costs, unless they make a vexatious claim or act inappropriately in the course of the proceedings.⁵¹

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

47 Tax Justice Network Australia, *Submission 4*, p. 6.

48 CPSU, *Submission 5*, p. 7.

49 Ms Louise Persse, CPSU, *Transcript of evidence*, Canberra, 30 November 2012, p. 4.

50 Ms Louise Persse, CPSU, *Transcript of evidence*, Canberra, 30 November 2012, p. 4.

51 Blueprint for Free Speech, *Transcript of evidence*, Canberra, 30 November 2012, p. 11.

- 2.62 Blueprint for Free Speech considers that these are black-letter additions which could act to encourage someone to make a public interest disclosure.⁵²
- 2.63 The Law Council is pleased that the bill lists the legal liabilities from which a person is expressly immune when making a public interest disclosure.⁵³
- 2.64 Further the Law Council supports the approach of providing positive remedies through a range of means in clauses 40 – 46 and consider that these protections provide positive remedies for persons making public interest disclosures who may suffer adverse consequences as a result of the disclosure.⁵⁴
- 2.65 The Law Council raise the concern that the bill provides very little protection from detrimental action for contractors.⁵⁵ They describe a potential situation where a contractor may suffer detrimental action as a result of a public interest disclosure, by not being awarded any more contract work.⁵⁶
- 2.66 The TJN Australia considers that the bill provides a means to enable a person making a public interest disclosure to access compensation for any detrimental action or victimisation suffered.⁵⁷
- 2.67 Transparency International Australia and Civil Liberties Australia are supportive of the provision in the Bill of a comprehensive system of checks and balances to discourage frivolous or vexatious disclosures.⁵⁸
- 2.68 Civil Liberties Australia are of the view that the government is obliged to ensure that detrimental acts or omissions do not occur and to protect and support employees in the face of risks of detrimental action. They contend that the provisions in part 7 of the bill represent best practice and should be adopted in other jurisdictions.⁵⁹
- 2.69 Whistleblowers Australia Inc considers that the bill should include more ‘upfront’ protection to a person making a public interest disclosure and

52 Mr Simon Wolf, *Blueprint for Free Speech, Transcript of evidence*, Canberra, 30 November 2012, p. 11.

53 Law Council of Australia, *Submission 9*, p. 3.

54 Law Council of Australia, *Submission 9*, p. 4.

55 Law Council of Australia, *Submission 9*, p. 7.

56 Law Council of Australia, *Submission 9*, p. 7.

57 Tax Justice Network Australia, *Submission 4*, p. 7.

58 Civil Liberties Australia, *Submission 6*, p. 3; Transparency International Australia, *Submission 12*, p. 2.

59 Civil Liberties Australia, *Submission 6*, p. 3.

should proceed on the presumption that protection is to be given unless decided otherwise by a court.⁶⁰

- 2.70 The IGIS highlighted an issue in the current compensation regime. At present the IGIS can conduct inquiries and investigations, and can recommend compensation if they conclude that someone has suffered detriment. However, the IGIS has no means to enforce this as the agency determines if compensation is payable.⁶¹
- 2.71 The Law Council is concerned that a person considering making a public interest disclosure may be concerned about the provision relating to loss of protection. They consider that the agency procedures referred to in clause 35 should include access to legal advice.⁶²

Oversight of public interest disclosures

- 2.72 The Wilkie Bill proposes a significant role for the Ombudsman and the IGIS. These roles are detailed in Part 8 of the Bill.
- 2.73 The Ombudsman and the IGIS may undertake a range of functions such as reviewing decisions and conducting investigations either independently or may have shared arrangements.
- 2.74 The Ombudsman is also required to publish standards and produce an annual report on the operations of the proposed legislation.
- 2.75 The Ombudsman is supportive of legislation which leads to more effective and efficient public administration and considers the role proposed by the Wilkie Bill to be compatible with other roles undertaken by the Ombudsman's office.⁶³
- 2.76 The CPSU considers that protecting the integrity of the public interest disclosures scheme should be a key role of the Ombudsman. They consider that the Ombudsman must play a role in leading such cultural change.⁶⁴
- 2.77 The IGIS supports the proposed role in the bill, considering it to be appropriate and aligned with the current functions of the office.⁶⁵

60 Whistleblowers Australia Inc, *Submission 10*, p. 3.

61 Dr Vivienne Thom, IGIS, *Transcript of evidence, Canberra, 30 November 2012*, p. 10.

62 Law Council of Australia, *Submission 9*, p. 6.

63 Mr Colin Neave, Commonwealth Ombudsman, *Transcript of evidence, Canberra, 30 November 2012*, p. 7.

64 CPSU, *Submission 5*, p. 10.

65 Dr Vivienne Thom, IGIS, *Transcript of evidence, Canberra, 30 November 2012*, p. 7.

- 2.78 The Law Council considers that the role of the Ombudsman as proposed by the legislation is appropriate given the role of the Ombudsman in oversight of fair and proper administration, as well the fact that the Ombudsman reports to Parliament.⁶⁶
- 2.79 Civil Liberties Australia welcomes the role of the Ombudsman in ensuring just outcomes for public officials who make public interest disclosures as well as in education and training programs about public interest disclosures.⁶⁷
- 2.80 The CPSU notes that it is important that there is increased ongoing funding for Ombudsman's office to fulfil this role.⁶⁸
- 2.81 CPSU queries the role of the Ombudsman in approving agency procedures. They consider the legislation as drafted does not make it clear at what stage the Ombudsman is involved in the development of the agency procedures and that similar to the conclusion in the LACA Report the Ombudsman should be involved before they are finalised and published.⁶⁹
- 2.82 The CPSU consider that having the Ombudsman providing guidance about the agency procedures for public interest disclosures would be a strong driver for cultural change.⁷⁰
- 2.83 The Whistleblowers Action Group Qld Inc does not support the role of the Ombudsman as designated by this proposed legislation.⁷¹ They consider there have been
- ...gross failures by watchdog authorities such as the Ombudsman's Office to fulfill their role of investigating and reporting such systemic wrongdoing within the agencies for which the watchdog authorities like the Ombudsman have had oversight.⁷²

Miscellaneous

- 2.84 Part 9 of the bill provides that the bill as drafted does not impact on any other related legislation.

66 Law Council of Australia, *Submission 9*, p. 5.

67 Civil Liberties Australia, *Submission 6*, p. 3.

68 CPSU, *Submission 5*, p. 9.

69 CPSU, *Submission 5*, p. 9.

70 Ms Louise Persse, CPSU, *Transcript of evidence*, Canberra, 30 November 2012, pp. 7-8.

71 Whistleblowers Action Group Qld Inc, *Submission 11*, p. 1.

72 Whistleblowers Action Group Qld Inc, *Submission 11*, p. 1.

- 2.85 In addition this section creates offences for using and divulging protected information as well as outlines protections for officials from liability involved in public interest disclosure.

Members of Parliament

- 2.86 The Wilkie Bill proposes to include Members of Parliament and Senators as persons about whom allegations may be made under the scheme.
- 2.87 The proposed legislation requires that disclosures about Senators are made to the President, about Members of Parliament to the Speaker and about *Members of Parliament Staff Act 1984* (MOPS) employees to the MP/Senator, or Speaker or President.
- 2.88 The CPSU expresses concern about the potential for confusion arising if there was a 'potential legislative whistleblowing scheme' and the Parliament's existing role in managing any allegations of misconduct by Members of Parliament.⁷³
- 2.89 The CPSU explains that having multiple avenues to deal with allegations of wrongdoing by Members of Parliament would not be useful. They also consider that inclusion of Members of Parliament in any whistleblowing scheme could cause it to become overly politicised.⁷⁴

Coverage of Members of Parliament and their staff

- 2.90 As noted above the Wilkie Bill includes Members of Parliament and people employed under MOPS as public officials who are able to make a public interest disclosure under this legislation.
- 2.91 The LACA report recommended that persons employed under MOPS be included in any public interest disclosure legislation, however the government response did not agree with this recommendation.
- 2.92 Civil Liberties Australia described the inclusion of MOPS staff as 'significant'.⁷⁵
- 2.93 The CPSU raised the concern that people employed under the MOPS Act should have the same protections as everyone else. They considered that there needed to be more clarity around this issue.⁷⁶

73 CPSU, *Submission 5*, p. 5.

74 CPSU, *Submission 5*, p. 5.

75 Civil Liberties Australia, *Submission 6*, p. 2.

76 Ms Louise Persse, CPSU, *Transcript of evidence, Canberra, 30 November 2012*, p. 17.

Members of Parliament as recipients for public interest disclosures

- 2.94 The LACA report recommended that Members of Parliament be included as a category of alternative authorised recipient of public interest disclosures, however the government response did not agree with this recommendation.
- 2.95 Professor AJ Brown told the Committee that it is not necessarily best practice for the legislation to explicitly include Members of Parliament as a person to whom a public interest disclosure can be made, as exists in NSW and QLD public interest disclosure legislation.
- 2.96 Professor AJ Brown explained:
- I do not believe those New South Wales or Queensland provisions are really best practice in terms of singling out individual members of parliament as disclosure recipients because I think that, for the sorts of reasons that Mrs Bishop articulated, it is part of their job.⁷⁷
- 2.97 Professor AJ Brown further detailed that he considers that clause 32 of the legislation, which deals with disclosures to third parties, provides that a public interest disclosure can be made to Members of Parliament, without them being named specifically as a recipient.
- ...the public official may make a public interest disclosure to a person – that is, any person – whom they reasonably believe can assist them to ensure that appropriate action is taken.⁷⁸
- 2.98 In contrast, Blueprint for Free Speech considers that Members of Parliament should be included as recipients for public interest disclosures.⁷⁹

A separate agency

- 2.99 Whistleblowers Action Group Qld Inc. supports the formation of a Whistleblower Protection Agency which has the survival of the whistleblower as its main function.⁸⁰
- 2.100 Whistleblowers Australia Inc would like to see the bill amended to create a separate whistleblower protection agency or public interest disclosure agency to ensure that the whistleblower is kept safe and treated with dignity and respect.⁸¹

77 Professor AJ Brown, *Transcript of evidence*, Canberra, 30 November 2012, p. 18.

78 Professor AJ Brown, *Transcript of evidence*, Canberra, 30 November 2012, p. 18.

79 Blueprint for Free Speech, *Submission 13*, p. 3.

80 Whistleblowers Action Group Qld Inc, *Submission 10*, p. 1.

81 Whistleblowers Australia Inc, *Submission 10*, p. 9.

False claims – ‘qui tam’ remedies

- 2.101 Whistleblowers Australia Inc would like to see the bill amended to provide for a ‘qui tam’ action or a US style *False Claims Act*.⁸²
- 2.102 Dr Kim Sawyer considers that *False Claims Act* legislation needs to be established in conjunction with appropriate provisions for an integrity agency.⁸³
- 2.103 Professor AJ Brown believes that this type of legislation is becoming more likely but made the point that the public interest disclosure legislation was developed to respond to the LACA report and government response.⁸⁴ He commented:

I think the time is increasingly approaching when comprehensive legislation on that front will serve Australia well and especially serve the Commonwealth well.⁸⁵

Public Interest Disclosure (Consequential Amendments) Bill 2012

- 2.104 This bill contains amendments to legislation where necessary to facilitate the introduction of the Public Interest Disclosure (Whistleblower Protection) Bill 2012.
- 2.105 Whistleblowers Australia Inc. would like to see the bill extend to apply to the Australian Federal Police and section 70 of the federal criminal code.⁸⁶

82 Whistleblowers Australia Inc, *Submission 10*, p. 9.

83 Dr Kim Sawyer, *Submission 2*, p. 1.

84 Professor AJ Brown, *Transcript of evidence*, Canberra, 30 November 2012, p. 14.

85 Professor AJ Brown, *Transcript of evidence*, Canberra, 30 November 2012, p. 13.

86 Whistleblowers Australia Inc, *Submission 10*, p. 3.

