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Senator Nita Green
Chair
Legal and Constitutional Affairs Legislation Committee
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Dear Senator Green

Review of the Public Interest Disclosure Amendment (Review) Bill 2022

Thank you for the opportunity to make this submission to the Legal and Constitutional Affairs Committee's review of the Public Interest Disclosure Amendment (Review) Bill 2022 (the Bill). I make no comment on the policy underlying the Bill, and note that my Office was broadly consulted by the Attorney-General's Department during the development of the Bill on issues relevant to my Office.

The IGIS is an independent statutory office holder appointed to review the activities of the Australia's six intelligence agencies¹ and the intelligence functions of the Australian Criminal Intelligence Commission (ACIC) and the Australian Federal Police (AFP)². Broadly under the *Inspector-General of Intelligence and Security Act 1986* (IGIS Act), the functions of the Inspector-General in respect of an agency within jurisdiction are to undertake inspections and conduct inquiries and preliminary inquiries. The IGIS also has a specific function to inquire into complaints made about the activities of ASIS, ASIO, ASD, AGO and the use of network activity warrants by the ACIC and the AFP³. This includes receiving complaints about the management of the public interest disclosure scheme by these agencies.

Under the PID Act, the IGIS is an authorised internal recipient of public interest disclosures concerning the agencies within IGIS' jurisdiction⁴. The IGIS also has an important oversight and educational role under the PID Act, as well as a requirement to assist the Commonwealth Ombudsman with its functions under the scheme⁵. In 2020-21 the IGIS received ten public interest disclosures about the conduct of the intelligence agencies.

¹ The Australian Secret Intelligence Service (ASIS), the Australian Security Intelligence Organisation (ASIO), the Office of National Intelligence (ONI), the Australian Signals Directorate (ASD), the Australian Geospatial Intelligence Organisation (AGO) and the Defence Intelligence Organisation (DIO).

² These relate specifically to the use of network activity warrants by the ACIC and the AFP under the *Surveillance Devices Act 2004*.

³ IGIS Act, s 8.

⁴ PID Act, s 34.

⁵ IGIS currently receives notice of allocations (PID Act, s 44) and is required to assist relevant officers and officials in relation to the operation of the Act, conduct educational and awareness programs relating to the Act and assist the Ombudsman in the performance of its functions under the Act (PID Act, ss 63 and 76).

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The IGIS understands the Bill seeks to amend the PID Act in order to implement recommendations from the 2016 Review of the Public Interest Disclosure Act 2013 (Moss Review), recommendations from other Parliamentary inquiries, as well other relatively minor amendments. The amendments are intended to provide immediate improvements to the operation of the PID Act, which are to be followed by broader reforms to the Commonwealth public sector whistleblowing framework in the near future. These further amendments will seek to clarify and improve the public interest disclosure process.

The Bill also proposes to make a number of amendments to further enhance IGIS oversight throughout the public interest disclosure process, including by requiring intelligence agencies and agencies with intelligence functions to provide notifications to the IGIS of urgent disclosures within, at most, one business day, and notifications relating to the progress of a disclosure that is investigated under the PID Act by the relevant agency⁶. Further, the IGIS will receive written notice of the completion of an investigation as well as a copy of the finalised public interest disclosure investigation report⁷. I note that there are no proposed legislative requirements in relation to IGIS' subsequent handling or review of these reports, and the explanatory memorandum to the Bill provides that the IGIS will not be required to review every public interest disclosure investigation report it receives⁸. Providing such flexibility will enable the IGIS to take a risk-based approach to its oversight of the public interest disclosure framework.

In terms of the amendments contained in the Bill and their impact on the IGIS' role under, and oversight of, the PID framework, the IGIS does not have any specific issues to raise for the Committee's consideration.

I trust this information is of assistance to the Committee.

The Hon Christopher Jessup KC
Inspector-General

20 January 2023

⁶ Schedule 1, item 15.

⁷ Schedule 1, item 28.

⁸ *Explanatory memorandum* at [2.74].