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Ms Sophie Dunstone
Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee

Submission

Inquiry into the Public Interest Disclosure Amendment (Review) Bill 2022

Dear Ms Dunstone

Thank you for the invitation to provide the Senate Legal and Constitutional Affairs Legislation Committee (Committee) with a submission to this inquiry.

My submission focuses on the operational functions of the *Public Interest Disclosure Act 2013* (PID Act) and their interaction with my statutory functions under the *Public Service Act 1999* (PS Act), including my role as custodian of Code of Conduct policy guidance for the Australian Public Service (APS), and my functional responsibility under the PS Act to undertake public interest disclosure (PID) inquiries to the extent that the disclosures relate to alleged breaches of the APS Code of Conduct in certain circumstances.

I strongly support the priority measures proposed for Stage 1 legislative amendments to the PID Act, to limit the definition of 'disclosable conduct' to conduct that relates to systemic wrongdoing or conduct which, if proved, could provide reasonable grounds for termination of employment. Legislating this change in the first tranche of amendments will provide immediate and much-needed clarity for all those in the APS who engage with the PID scheme.

While these measures may not initially reduce the number of purported disclosures made to agencies, the administrative burden on agencies will nonetheless decrease significantly as complaints regarding personal employment-related grievances or lower-level misconduct are moved to the most appropriate handling framework at an earlier stage of the handling process. Dealing with such matters outside the PID scheme is substantially more efficient and effective both for complainants and for agencies, and ensures that PID resources are directed to genuine whistleblowing matters.

I note in this regard that since the implementation of the PID scheme the Parliamentary Workplace Support Service has been established, providing an alternative avenue for current



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or former Parliamentary staff to make a complaint of misconduct in the workplace. Should the Stage 1 measures be legislated, I anticipate similarly that, over time, and with guidance and training, fewer attempts will be made in the APS to use the PID scheme to report matters outside its intended scope.

I also strongly support the proposed requirement for Principal Officers to provide ongoing education and training about the PID scheme, as well as integrity and accountability. I may suggest also that further guidance may be required regarding these proposed positive obligations, and I would support linkage with the mandatory integrity training provisions of the Australian Public Service Commissioner's Directions 2022 in this regard.

I look forward to collaborating closely with the Attorney-General's Department (AGD) regarding Stage 2 of the proposed changes to ensure the clear articulation of my proposed roles and responsibilities as an investigative agency under the PID scheme, and their alignment with my existing integrity functions under the PS Act. These functions include inquiring into alleged breaches of the APS Code of Conduct by agency heads, and inquiring into PIDs to the extent that they relate to alleged breaches of the Code of Conduct. It is my strong intention, subject to consultation with AGD, to limit my role as an investigative agency to these specific circumstances.

Thank you again for the opportunity to make a submission to the Committee in my capacity as Australian Public Service Commissioner. I look forward to further close consultation with AGD on the detail of proposed measures to address the complexity of the existing scheme—including guidance for agencies, legislative interaction with the PS Act framework and the National Anti-Corruption Commission Act 2022, procedural fairness arrangements for subjects of investigation, support and protection for disclosers and witnesses, and any other matters relating to the APS and its employees.

Yours sincerely

Peter Woolcott AO
Australian Public Service Commissioner

17 January 2023