

DETAILED PRINCIPLES & CONTENTS OF THE BILL(S)

The base principles at left are taken from Brown, A.J., Latimer P., McMillan J. & Wheeler C. (2008). 'Best Practice Whistleblowing Legislation for the Public Sector: Key Principles' in Brown, A. J. (ed), Whistleblowing in the Australian Public Sector: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations Australia & New Zealand School of Government / ANU E-Press, Canberra.

Dreyfus HRLACA 2009 Cttee recommendations and Government Response 2010 broken down against these.

Relevant sections of the *Public Interest Disclosure (Whistleblower Protection) Bill 2012* and consequential amendments at right.

	Base principle	Dreyfus Cttee (2009)	Govt Response (2010)	Key sections
1	Objectives and title The stated objectives of public interest disclosure legislation should be: - to support public interest whistleblowing by facilitating disclosure of wrongdoing - to ensure that public interest disclosures are properly assessed, and where necessary investigated and actioned - to ensure that a person making a public interest disclosure is protected against detriment and reprisal.	Recommendation 2: <i>The Committee recommends that the purpose and principles of the Public Interest Disclosure Bill should reflect the following:</i> □ <i>the purpose of the Bill is to promote accountability and integrity in public administration; and</i> □ <i>the provisions of the Bill are guided by the following principles:</i> a) <i>it is in the public interest that accountability and integrity in public administration are promoted by identifying and addressing wrongdoing in the public sector;</i> b) <i>people within the public sector have a right to raise their concerns about wrongdoing within the sector without fear of reprisal;</i> c) <i>people have a responsibility to raise those concerns in good faith;</i> d) <i>governments have a right to consider policy and administration in private; and</i> e) <i>government and the public sector have a responsibility to be receptive to concerns which are raised.</i>	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.	Section 3 (Protection against, and in response to detrimental action needed to be reasserted as an objective of the Act (both in support of other objectives and in its own right). Where interests have to be balanced, Bill needs to provide for an appropriate balance (not skew back in favour of secrecy / confidentiality)).

	These objectives should be captured in the short and long title to the legislation. <i>Public Interest Disclosure Act</i> is a preferred title to 'Whistleblower Protection Act' or 'Protected Disclosures Act'.	Recommendation 1: <i>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.</i> Recommendation 8: <i>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.</i>	Government Response: Agreed. The Government intends to introduce the <i>Public Interest Disclosure Bill</i> (the PID Bill) during this year. Government Response: Not agreed. ... 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'.	See title See Consequential Amendments.
2	Subject matter of disclosure Legislation should specify the topics, or types of proscribed wrongdoing, about which a public interest disclosure can be made. The topics should cover all significant wrongdoing or inaction within government that is contrary to the public interest. The topics should include: - an alleged crime or breach of the law - official corruption, including abuse of power, breach of trust, and conflict of interest - official misconduct, and - defective administration,	[Rec 4: Implicit that reporting of wrongdoing across entire public sector i.e. by any public official or agency should trigger protections.] Recommendation 7: <i>The Committee recommends that the types of disclosures to be protected ... include, but not be limited to serious matters related to:</i> ☐ <i>illegal activity;</i> ☐ <i>corruption;</i> ☐ <i>maladministration;</i> ☐ <i>breach of public trust;</i>	Government Response to Rec 4: Not agreed. The PID Bill will not authorise employees under the <i>Members of Parliament (Staff) Act 1984</i> 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 <i>Members of Parliament (Staff) Act 1984</i> employees. 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 (inc corruption); ☐ maladministration; ☐ breach of public trust; ☐ scientific misconduct;	Bill follows Dreyfus committee rather than Government response – includes parliamentarians and staff: Sections 11(b), 12(b) See definition of disclosable conduct: section 9

	including: - negligence or incompetence - improper financial management that constitutes a significant waste of public money or time, and - any failure to perform a duty that could result in injury to the public, such as an unacceptable risk to public health, public safety or the environment.	☐ <i>scientific misconduct;</i> ☐ <i>wastage of public funds;</i> ☐ <i>dangers to public health;</i> ☐ <i>dangers to public safety;</i> ☐ <i>dangers to the environment;</i> ☐ <i>official misconduct (including breaches of applicable codes of conduct); and</i> ☐ <i>adverse action against a person who makes a public interest disclosure ...</i> Recommendation 8:	☐ 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. ... Government Response: Not agreed.	Section 8(2)(b) (NB any 'policy decision' exclusion needs to be framed so as not to exclude disclosures about wrongdoing that have policy implications or may result in policies being questioned or criticised, etc.) Section 9 – all the wrongdoing types involved are by definition serious. See section 9, and consequential amendments
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		<i>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.</i>	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 <i>Parliamentary Service Act 1999</i> , rather than making a disclosure under the PID Act, should retain the protections offered by the <i>Public Service Act 1999</i> or the <i>Parliamentary Service Act 1999</i> .	– breaches of APS Code will only attract PID Act protections where they fulfil the s.9 definitions, otherwise they are simply still covered by the Public Service Act alone.
3	Person making disclosure A disclosure should qualify as a ‘public interest disclosure’ if either of two tests is satisfied: (a) the person making the disclosure holds an honest and reasonable belief that the disclosure shows proscribed wrongdoing (the subjective test); or (b) the disclosure does show, or tends to show, proscribed wrongdoing, irrespective of the person’s belief (the objective test). The motivation or intention of the person making the disclosure should not be relevant. Nor should a person be required to use a special form or declare that it is a public interest disclosure.	Recommendation 10: <i>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.</i> Recommendation 9: <i>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.</i>	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. 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.	Section 8(1)(a). Includes this subjective test, but also includes the recommended objective test (as per ACT etc) for internal and regulatory disclosures. Correct – nothing in Bill limits by motive Section 18(1)(c)

(NB The principles are designed to apply to any employee, contractor or other person working in a public sector agency.)

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.

Sections 10 and 11 for agencies and officials covered.

See s8(2)(c) and 8(3) for excluded judicial matters (protecting separation of judicial power for constitutional reasons).

(NB The principles are not designed to apply to disclosures or complaints made by members of the public, such as clients and customers of an agency. Members of the public warrant comparable protection, but where it does not already exist, separate legislation may be required for that purpose. Equally, there are specific situations for which a tailored scheme may be required to protect people against reprisal or detriment by reason of making a complaint, such as patients or aged persons in a nursing home.)

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.

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.

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.

Recommendation 12:

The Committee recommends that protection under the Public Interest

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.

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*.

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.

Government Response: Agreed in principle.

The Government considers that **knowingly false disclosures** should not receive the protection of

As above -- Bill follows Dreyfus committee rather than Government response – includes parliamentarians and staff:

Sections 11(b), 12(b).

However, these disclosures are primarily to be made to the Speaker or President, who have the primary responsibility for ensuring their disclosure.

Section 11(c) – regulation.

[Not specifically included in the Bill]

Section 8(2)

		<i>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.</i>	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. [??] Government Response to Rec 14: 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.	Section 47
4	Receipt of disclosure Legislation should allow a public interest disclosure to be made to a variety of different people or agencies, including: • the immediate or any higher supervisor of the person making the disclosure • the chief executive officer of the agency • any designated unit or person in an agency • any dedicated hotline, including external hotlines contracted by an agency, or			Section 17 (follows Qld and ACT precedent)

- any external agency with jurisdiction over the matter (eg, ombudsman, corruption commission, auditor-general, or public sector standards commissioner).

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.*

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*

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.

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;

Section 17(b)(iv) and (v) for how these agencies may receive disclosures.

See sections 19(2), 30, Part 8 for roles of Ombudsman and IGIS as the oversight agencies.

See Part 8

See sections 22 and 23.

See sections 17(b)(iv) and (v);

Sections 22 and 23;

Section 35 (criminal offences / AFP)

Defence; and

☐ Privacy Commissioner.

- ☐ 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).

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.

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.

See sections 17(b)(iv) and (v);

Sections 22 and 23;

Section 35 (criminal offences / AFP)

Section 10(2);
12(1)(a)(iii)(iv).

Parliamentarians not specifically included as disclosure recipients, other than responsible Ministers (see section 17(b)(vii)), but could be included in third party disclosure, like anyone else (s 32(1)).

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.

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.

		Recommendation 23: <i>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.</i> Recommendation 24: <i>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.</i>	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. 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 <i>Parliamentary Privileges Act 1987</i>.	See section 36 for the general confidentiality guidelines. Section 61
5	Recording and reporting All public interest disclosures to an organisation should be formally recorded, noting the time of receipt, general subject matter, and how the disclosure was handled. Recording systems, including required levels of detail, will vary according to agencies' circumstances, but should be consistent with minimum standards across the public sector (see principle 7).		Government Response to Rec 16: 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; ... [etc]	Section 19(2); Section 30; Section 37; etc

6	Acting on a disclosure An agency receiving a disclosure should be obliged: to assess that disclosure and take prompt and appropriate action, which may include investigating the disclosure or referring it to an external agency	Recommendation 11: <i>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.</i> Recommendation 16: <i>The Committee recommends that the Public Interest Disclosure Bill provide that agencies are obliged to:</i> ☐ 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. 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. 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	Sections 26 and 27 Sections 28, 29, 30 (keeping informed) Sections 34 and 35 (agency obligations and procedures)
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	to the extent practicable and reasonable, to keep the person who made the disclosure informed of action proposed to be taken, the progress of any action, and the outcomes of any action, and	See above	enactment, for example under the <i>Ombudsman Act 1976</i> or the <i>Privacy Act 1988</i> etc; and ☐ when conducting an investigation: - o make reasonable attempts to uncover information and otherwise undertake thorough investigations of PIDs; - o undertake an assessment of the risks that detrimental action may be taken against the person who made the disclosure; - o 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; - o 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 - o provide an initial estimate of the length of the investigation to the discloser and the integrity agency. See above plus: ... 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;	Above
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	to include in its annual report a summary of the numbers of public interest disclosures received, and the action taken.		☐ 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. See responses to Rec 16 and 20	Section 37
7	Oversight agency One of the external agencies with responsibility for public interest disclosures should be designated as the oversight agency for the administration of the legislation. The responsibilities of the oversight agency should include: - being notified by agencies of all disclosures, and recording those disclosures and how they were dealt with and resolved - having the option to decide, upon being notified of a disclosure, to provide advice or direction to an agency on how the disclosure should be handled, to manage the investigation of the disclosure by the agency, or to take over... - providing advice or direction to agencies on the steps that should be taken to protect people who have made disclosures, or to provide remedial action for a person who has suffered detriment as a result of making a disclosure		Government Response to Rec 17: 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.	See sections 19(2), 30, Part 8 for roles of Ombudsman and IGIS as the oversight agencies. See Part 8 Sections 50 (review), and 51 (investigations)

• promoting the objects of the legislation, both within government and publicly, and conducting training and public education • publishing model procedures for the administration of the legislation, with which agencies' internal procedures must be consistent; and • conducting a public review at least once every five years of the operation of the legislation.	Recommendation 20: <i>The Committee recommends ... the Commonwealth Ombudsman as the oversight and integrity agency with the following responsibilities:</i> ☐ <i>general administration of the Act under the Minister;</i> ☐ <i>set standards for the investigation, reconsideration, review and reporting of public interest disclosures;</i> ☐ <i>approve public interest disclosure procedures proposed by agencies;</i> ☐ <i>refer public interest disclosures to other appropriate agencies;</i> ☐ <i>receive referrals of public interest disclosures and conduct investigations or reviews where appropriate;</i> ☐ <i>provide assistance to agencies in implementing the public interest disclosure system including;</i> <i>o provide assistance to employees within the public sector in promoting awareness of the system through educational activities; and</i> <i>o providing an anonymous and confidential advice line; and</i> <i>o receive data on the use and performance of the public interest disclosure system and report to Parliament on the operation of the system.</i> Recommendation 26: <i>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</i>	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. 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.	See Part 8 Ombudsman is responsible for standards and guidelines, but must consult IGIS in preparing them. Sections 35(4) and (5) for provision, review and amendment of procedures See Part 8 See section 49(3) on mutual assistance Section 52
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		<i>made) where the Ombudsman considers it is in the public interest to do so.</i>	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.	
8	Confidentiality Disclosures should be received and investigated in private, so as to safeguard the identity of a person making a disclosure to the maximum extent possible within the agency's control. Avenues should be available for disclosures to be made confidentially, and where practical, individual disclosures should be dealt with in ways that do not disclose the identity of the person making the disclosure, and preferably even that a disclosure has in fact been made. This principle is subject to the need to disclose a person's identity to other parties – for example, where this is absolutely necessary to facilitate the effective investigation of a disclosure, provide procedural fairness, protect a person who has made a disclosure, or make a public report on how a disclosure was dealt with.	See Rec 16 above	See above	Sections 36 and 58
9	Protection of person making disclosure A person who has made a disclosure to which the legislation applies should be protected against criminal or civil liability, or other detriment, for making the disclosure. For example, the	Recommendation 14: <i>The Committee recommends that the protections provided under the Public Interest Disclosure Bill include immunity from criminal liability, from liability for civil</i>	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	Part 7 (sections 38-48)

	person: • should not be liable to prosecution for breach of a statutory secrecy provision • should not incur civil liability for, for example, defamation or breach of confidence • should not be subject to discipline or other workplace sanction, such as reduction in salary or position, or termination of employment, and • should be entitled to legal redress if they suffer detriment as a result of making the disclosure.	penalties, from civil actions such as defamation and breach of confidence, and from administrative sanction.	liability resulting from the disclosure, where the disclosure has been made in accordance with the scheme. ...	
10	Disclosure outside an agency A disclosure made to a person or body that is not designated by the legislation to receive disclosures (e.g., the media) should be protected in exceptional circumstances as defined in the legislation. The protection should only apply if it is reasonable in all the circumstances for the disclosure to be made to some other person or body to ensure that it is effectively investigated. As a general guide, the protection should apply where a person has first made the disclosure to a designated person or body and there has been a failure by that person or body to take reasonable and timely action.	Recommendation 21: <i>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.</i>	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	Part 5 (sections 31-33). 31(1)(a),(b) (All matters covered are serious: s.9) 31(1)(c),(d),(e) 33(1) 33(2)

		Recommendation 25: <i>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.</i>	(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. 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.	31(1)(a)(b) 31(2) Implicit in: 31(1)(a)(b) 31(2) 33(2) – intelligence etc (as defined by s15); 33(3) - foreign 36(3)
11	Agency responsibility to ensure protection The responsibilities of an agency under the legislation should include: establishing proper internal procedures in the agency for receiving, recording and investigating disclosures, for protecting persons who make disclosures, and for safeguarding the privacy of those who make disclosures	Recommendation 15: <i>The Committee recommends that the Public Interest Disclosure Bill provide an obligation for agency heads to:</i> ☐ 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.	Sections 34 and 35

- ensuring that staff ... are made aware of their responsibilities under the legislation, including the responsibility to support and protect any person making a disclosure - upon receipt of a disclosure, assessing whether the person who made the disclosure – or any other person – faces any risk of detriment or requires special protection as a result - where necessary, taking all reasonable measures to protect a person who has made a disclosure against direct or indirect detriment, actual or foreseeable, and - taking remedial action in the event that a person suffers detriment as a result of making a disclosure. It should be the duty of the senior executives of an agency to ensure that these responsibilities are met by the agency.	Recommendation 16: <i>The Committee recommends that the Public Interest Disclosure Bill provide that agencies are obliged to:</i> ☐ 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 <i>Ombudsman Act 1976</i> or the <i>Privacy Act 1988</i> etc; and ☐ when conducting an investigation: - o make reasonable attempts to uncover information and otherwise undertake thorough investigations of PIDs; - o undertake an assessment of the risks that detrimental action may be taken against the person who made the disclosure;	Section 34(e) See above; Section 19, 20, 34(b) Section 35(2)
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			o 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; o 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 o provide an initial estimate of the length of the investigation to the discloser and the integrity agency.	Section 29 Section 29 Section 30 Section 35(2)(d) Section 54
12	Remedial action Where detriment is suffered by a person as a result of a disclosure having been made, remedial action of the following kind should be taken by the agency, or failing that the oversight agency, to the extent necessary to prevent or remedy the detriment: • stopping the detrimental action and preventing its recurrence, including by way of injunction • placing the person in the situation they would have been in but for the detrimental action, including if necessary the transfer of the person (with their informed consent) to another equivalent position	Recommendation 13: <i>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.</i>	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 <i>Fair Work Act 2009</i> (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.	Sections 40-45; Consequential amendments to Fair Work Act. • clear and realistic compensation avenues to low cost tribunal (Fair Work Act regime as proposed by Dreyfus); • compensation for unfair dismissal uncapped to match Employment Rights Act 1996 (UK), ss 103A, 123, 124(1A). • back up right of civil action for damages in Federal Court where above not fulfilled or

	• an apology • compensation (pecuniary and/or non-pecuniary) for the detriment suffered, if the detriment could have been prevented, avoided or minimised, and • disciplinary or criminal action against any person responsible for the detriment Jurisdiction to deal with compensation applications should be conferred upon a low-cost tribunal with expertise in determining the rights and responsibilities of employers and employees. Consideration should also be given to reducing or reversing the onus of proof in cases of detrimental action, so that where a public interest disclosure has been made and detriment is suffered, it falls to those allegedly responsible to explain why the detriment did <i>not</i> result from the making of the disclosure.		unavailable for any reason, amended to reflect best practice in Qld and Act plus fairer cost rule (s44(4)). Section 46 (Criminal offence of victimisation secondary to remediation and compensation rights, not other way round as often at present (and has caused problems in Qld)). See above
13	<i>Ongoing assessment and protection</i> To the extent practicable, an assessment should be undertaken into the impact upon a person of having made a disclosure... This assessment should be undertaken at an appropriate time or times (e.g., at intervals of two, five or ten years). This assessment may be conducted by the agency to which the disclosure was made, or by the oversight agency.		Section 35(2)(j) – obligation on agencies