



Andrew Wilkie MP
INDEPENDENT MEMBER FOR DENISON

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Dr Anna Dacre
Committee Secretary
House of Representatives Standing Committee on Social Policy and Legal Affairs
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Dr Dacre

Submission – Public Interest Disclosure Bill 2013

I appreciate the opportunity to provide a submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs' inquiry into the *Public Interest Disclosure Bill 2013* (the current Bill). I am deeply concerned that the current Bill excludes crucial elements required to fulfil its intent and appropriately protect whistleblowers.

My concerns are fourfold:

1. Intelligence agencies: The current Bill imposes overly strict conditions on the circumstances allowing public officials to make public interest disclosures relating to intelligence agencies. While it is certainly appropriate for sensitive information to be subject to special treatment, the current Bill includes blanket exemptions for intelligence agencies which prohibit public interest disclosures relating to intelligence agencies in almost all circumstances.
2. External disclosures: Fear of reprisal and other factors may render a public official unable to disclose misconduct internally. In these circumstances legislation should protect external public interest disclosures to media. The current Bill places extreme and unrealistic limitations on external disclosures effectively ensuring that external disclosures would very rarely be protected. An important benchmark exists which I have called the "Allan Kessing test" – any whistleblower protection bill must be sufficiently robust to provide protection in the circumstances of Allan Kessing's 2005 public interest disclosure. The current Bill does not.

3. Exemption for Members of Parliament and their staff: I can see no valid reason for Members of Parliament (including Ministers) and their staff to be excluded protection for public interest disclosures. That the current Bill omits these categories of public officials is a serious flaw and must be corrected. The omission of Members of Parliament (including Ministers) and their staff appears to be a cynical move to prevent these public officials from making public interest disclosures and is entirely at odds with the spirit of whistleblower protection.
4. Inappropriate complexity and negative framing: The current Bill weaves a web of extraordinarily complicated definitions to negatively frame the circumstances in which public interest disclosures are protected. For example, the test to determine whether an external disclosure is protected lists 13 factors *against* disclosure and none *for* disclosure. The result is that the legislation is both complex and ambiguous. Public officials considering public interest disclosures must be able to clearly determine whether their disclosure will be protected without seeking assistance from a lawyer or other third party.

I have introduced to Parliament the *Public Interest Disclosure (Whistleblower Protection) Bill 2012*, which I firmly believe is robust, clear and provides appropriate whistleblower protection for all public officials. I have attached a copy of that Bill and its Explanatory Memorandum. I strongly encourage the Committee to recommend that it either be passed in place of the current Bill or the current Bill be amended to mirror the protection and clarity in the *Public Interest Disclosure (Whistleblower Protection) Bill 2012*.

Robust whistleblower protection will foster transparency and accountability throughout the public sector. Secrecy can be institutionally convenient for governments and the public service. It is therefore up to the Parliament, and the Government, to put aside self-interest and genuinely embrace these values of transparency and accountability which are so unambiguously in the public interest. Our commitment to a culture of openness in public service must not be half-hearted. This opportunity is an opportunity too important to squander.

Yours sincerely

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